82-2124

Office - Supreme Court, U.S.
FILED
JUN 28 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

NO. _____

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

On Appeal From the Court of Appeals
For the Third Supreme Judicial District of Texas

JURISDICTIONAL STATEMENT

ROBERT L. BURNS
Ten Ten Lamar Building
Suite 1111
Houston, Texas 77002
(713) 654-4454
Attorney for Appellants

Of Counsel:
JOHN O. HOYT
P. O. Box 186
Humble, Texas 77338

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

I

QUESTIONS PRESENTED

Article 1118x, Vernon's Texas Civil Statutes (V.T.C.S.),[1] provides for the governing body of the largest city (principal city) in a metropolitan area to define the initial territory of a rapid transit authority and for the authority to exist or cease to exist in each of the following units of election depending on whether a majority of the votes cast in each is in favor of or against creation and levy of a tax: (1) the principal city and all incorporated cities located within its outer boundary, (2) unincorporated areas designated by the County Commissioners Court, and (3) every other incorporated city located within the initial territory. The City of Humble and an adjacent unincorporated area are encircled by a strip of land annexed by the principal city (City of Houston). A majority of the voters in Humble voted against creation of the authority and levy of a tax, but they were included in the transit authority and subjected to the tax because of the affirmative vote in the principal city. About 50% of the population of unincorporated election unit no. 3 resided in the encircled unincorporated area adjacent to Humble. This unit voted against and was excluded from the authority. The questions presented are:

1. Whether the aforesaid voting scheme violates the Equal Protection Clause of the Fourteenth Amendment

(a) by greatly diluting the weight of the vote of every voter in Humble and preventing the weight of every voter in the authority from being equal on the creation and tax propositions, issues on which every voter has substantially identical interests,

---

1. Texas citation manuals would cite this statute as Tex. Rev. Civ. Stat. Ann. art. 1118x, but there is no such publication. The last Revised Civil Statutes was published in 1925 and Vernon publishes the annotated statutes.

(b) by requiring the votes in Humble and the votes in Houston in the creation and tax election to be counted together solely because Humble is within the outer boundary of Houston while permitting voters in incorporated cities and unincorporated areas within and outside the outer boundary of Houston to vote in separate units of election, and

(c) when the voting scheme for regional transportation authorities under Article 1118y, V.T.C.S., establishes a principal city, each designated unincorporated area and each incorporated city (within or outside the boundary of a principal city) as a separate unit of election at the creation and tax election.

2. Whether Article 1118x violates the Equal Protection Clause of the Fourteenth Amendment and its one person, one vote principle by providing for appointment rather than election of the legislative body of a metropolitan transit authority.

LIST OF PARTIES

The Appellants (Plaintiffs) are Wilson Archer, Jerry Hamilton and Ellis L. Herron (qualified voters of the City of Humble), Wilson's Superette, Inc., and the City of Humble,[2] all residents of Harris County, Texas. The Appellees (Defendants) are Metropolitan Transit Authority, Bob Bullock, Comptroller of Public Accounts of the State of Texas, and the State of Texas.

---

2. Wilson's Superette, Inc., has no parent company, subsidiary or affiliate and, of course, has no federal claim. Unless it can claim the right as *parens patriae* the City of Humble does not have a federal claim.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	I
LIST OF PARTIES	II
TABLE OF CONTENTS	III
TABLE OF AUTHORITIES	IV
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
THE QUESTIONS ARE SUBSTANTIAL	12
All Voters Have Substantially Identical Interests	13
Discrimination—Enclave Unincorporated Area	17
Discrimination—Enclave Cities	17
Discrimination—Outside Cities	18
Rational Basis—Strict Scrutiny	19
Voting Schemes of Article 1118x and Article 1118y	21
The MTA Legislative Body	21
CONCLUSION	26
PROOF OF SERVICE	27
APPENDIX:	
Judgment of Court of Appeals	1a
Opinion of Court of Appeals	2a
Order of Court of Appeals on Motion for Rehearing	22a
Order of Texas Supreme Court on Application for Writ of Error	23a
Order of Texas Supreme Court on Motion for Rehearing on Application for Writ of Error	24a
Notice of Appeal	25a

Page

Tex. Laws 1977, ch. 863, p. 2168 (Article 1118x, V.T.C.S.) 29a

Tex. Laws 1973, ch. 141, p. 302 (Article 1118x, V.T.C.S., Sec. 1-5) 65a

Tex. Laws 1979, ch. 683, p. 1610 (Article 1118y, V.T.C.S., Sec. 1-9) 74a

Map Legend 91a

Map of Harris County 92a

Map of City of Humble and Unincorporated Area 93a

Map of Jacinto City and Galena Park Area 94a

TABLE OF AUTHORITIES

CASES Page

Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743, 93 S.Ct. 1237 (1973) 23

Avery v. Midland County, 390 U.S. 474, 88 S.Ct. 1114 (1968) 13

Ball v. James, 451 U.S. 355, 101 S.Ct. 1811 (1981) 23, 24

Bianchi v. Griffing, 393 F.2d 457 (C.A. 2 1968) 23

Cipriano v. City of Houma, 395 U.S. 701, 89 S.Ct. 1897 (1969) 13, 15, 20

City of Galena Park v. City of Houston, 133 S.W.2d 162 (Tex. Civ. App. 1939, writ ref'd) 18

City of Nassau Bay v. City of Webster, 600 S.W.2d 905 (writ ref'd, n.r.e., 608 S.W.2d 618 [Tex. 1980]) 18

City of Phoenix v. Kolodziejski, 399 U.S. 204, 90 S.Ct. 1990 (1970) 13, 15, 20

Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995 (1972) .. 20

Evans v. Cornman, 398 U.S. 419, 90 S.Ct. 1752 (1970) .. 20, 21

Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125 (1960) 17

Gray v. Sanders, 372 U.S. 368, 83 S.Ct. 801 (1963) 20

Hadley v. Junior College Dist. of Metropolitan Kansas City, 397 U.S. 50, 90 S.Ct. 791 (1970) 13, 20, 21, 23

Hill v. Stone, 421 U.S. 289, 95 S.Ct. 1637 (1975) 13

Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S.Ct. 383 (1978) 25

Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676, 88 S.Ct. 1298 (1968) 2

Kramer v. Union Free School District, 395 U.S. 621, 89 S.Ct. 1886 (1969) 21

CASES

	Page
Little Thunder v. South Dakota, 518 F.2d 1253 (C.A. 8 1975)	25
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 74 S.Ct. 396 (1954)	2
Moody v. Flowers, (Board of Supervisors v. Bianchi), 387 U.S. 97, 87 S.Ct. 1544 (1967)	22
Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362 (1964)	13, 20, 23, 24
Sailors v. Board of Education of Kent, 387 U.S. 105, 87 S.Ct. 1549 (1967)	22, 23, 26
Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S.Ct. 1224 (1973)	23
Town of Lockport v. Citizens for Community Action, 430 U.S. 259, 97 S.Ct. 1047 (1977)	14, 15, 19
Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5 (1968)	20

CONSTITUTIONS AND STATUTES

United States Constitution

Fourteenth Amendment	2, 3, 4, 13, 15, 20, 22, 23

Texas Statutes

Article 1118x	*passim*
Sec. 2(8)	10
Sec. 3	10
Sec. 3(b)	4
Sec. 4	11
Sec. 4(e)	25
Sec. 5	8
Sec. 5(c)	5
Sec. 5(g)	6
Sec. 6	11
Sec. 6(p)	12
Sec. 6B	11
Sec. 11A	16
Sec. 11B	16
Sec. 12	11
Sec. 17	24
Article 1118y	3, 10, 21
Articles 1183-1187	18
Tex. Laws 1973, ch. 141, p. 302 (Article 1118x, V.T.C.S.), Sec. 1-5	3, 8, 9
Tex. Laws 1975, ch. 712, p. 2273	9
Tex. Laws 1977, ch. 863, p. 2168 (Art. 1118x, V.T.C.S.)	3, 9
Tex. Laws 1979, ch. 683, p. 1610 (Art. 1118y, V.T.C.S.), Sec. 1-9	3, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

NO. _____

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

On Appeal From the Court of Appeals
For the Third Supreme Judicial District of Texas

JURISDICTIONAL STATEMENT

OPINION BELOW

The district court did not render an opinion. The opinion of the Court of Appeals is reported at 636 S.W. 2d 484. App. 2a. The Supreme Court of Texas did not render an opinion.

JURISDICTION

This is an appeal from a final judgment rendered pursuant to the decision of the Court of Appeals for the

Third Supreme Judicial District of Texas holding that a state statute providing for creation of a metropolitan transit authority is valid. In their pleadings and throughout the proceedings in the state courts, Plaintiffs challenged the validity of that statute on the ground of its repugnance to the Equal Protection Clause of the Fourteenth Amendment. On June 2, 1982, the Court of Appeals rendered judgment affirming the trial court judgment that Plaintiffs take nothing against the Defendants. App. 1a. The court overruled Plaintiff's motion for rehearing on July 28, 1982. App. 22a. Application for writ of error (discretionary review) was filed and refused, "no reversible error,"[3] by the Supreme Court of Texas on February 16, 1983, and the motion for rehearing of the application was overruled on March 30, 1983. App. 23a.

Notice of appeal to this Court was filed in the Court of Appeals (the court possessing the record) on May 4, 1983. App. 25a.

This Court has jurisdiction of this appeal by virtue of 28 U.S.C. § 1257(2).

The appeal is being docketed in this Court within ninety days from the denial of rehearing in the Texas Supreme Court. Since that Court denied application for writ of error, the appeal is from the judgment of the Court of Appeals. *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 678 (1968); *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 160 (1954).

---

3. This notation means that the Court is not satisfied that the opinion of the Court of Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal. Tex. R. Civ. P. 483.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provision involved is the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution:

> No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Tex. Laws 1977, ch. 863, p. 2168 (Art. 1118x, V.T.C.S.); Tex. Laws 1973, ch. 141, p. 302 (Article 1118x, V.T.C.S.), Sec. 1-5; and Tex. Laws 1979, ch. 683, p. 1610 (Art. 1118y, V.T.C.S.), Sec. 1-9, are statutes involved and their pertinent texts are set forth in the Appendix, App. 29a, 65a and 74a.

STATEMENT OF THE CASE

In December, 1978, Wilson Archer, Jerry Hamilton and Ellis L. Herron (qualified voters of the City of Humble), Wilson's Superette, Inc., and the City of Humble of Harris County, Texas filed this suit in the District Court of Travis County, Texas, against the Metropolitan Transit Authority (MTA) and Bob Bullock, State Comptroller of Public Accounts, seeking a declaratory judgment that Article 1118x, V.T.C.S. was invalid, that MTA was without power to collect or spend the proceeds from its sales and use tax and that the Comptroller was not authorized to administer and collect the sales and use tax. MTA filed a general denial and the Attorney General of Texas filed an answer in behalf of Bullock and the State of Texas.

By their trial pleading, the individual Plaintiffs (Plaintiff Voters) asserted that Article 1118x impaired their voting rights and violated the Equal Protection Clause to the Fourteenth Amendment and along with the other two Plaintiffs alleged that the statute violated various provisions of the Texas Constitution. The federal claims were also presented to the district court by written brief and oral argument.

After a bench trial, the district court rendered judgment that Plaintiffs take nothing. The federal claims stated in the questions presented were urged to the Texas Court of Appeals by points of error in written briefs and motion for rehearing and oral argument and presented to the Texas Supreme Court in application for writ of error, reply brief and motion for rehearing.

Pursuant to Article 1118x, in September, 1977, the governing body of the City of Houston enacted an ordinance instituting proceedings to create a rapid transit authority and defining the initial territory as Harris County and all territory within all adjacent counties situated within fifteen named cities. Sec. 3(b), Article 1118x mandates inclusion of all of the county in which the major portion of the principal city is located. After a hearing, the governing body passed an ordinance creating the Metropolitan Transit Authority (MTA) within the described initial territory. The mayor of Houston appointed the initial Board of Directors of MTA, and in July, 1978, the Board notified the Harris County Commissioners Court of its intention to call a confirmation and tax election.

Upon receipt of such notice the Court was required to "create not more than five designated election areas in

the unincorporated portion" of the county. Sec. 5(c). Pursuant thereto the Commissioners Court created five election units in the unincorporated area of the initial territory of MTA. The five election units vary greatly in size and population. App. 27a. Unincorporated Election Units Nos. 2 and 3 include a large area which, like Humble, is within the outer boundary of Houston. The Commissioners Court made no attempt to equalize the population in the five election units. The county judge (presiding officer of the Commissioners Court) testified that he was interested in having in one election unit people that were going to vote for the MTA and in another election unit people who were going to vote against and that the boundaries of the election units were drawn with this in mind.

The Board then ordered an election to be held on August 12, 1978, submitting the proposition of whether creation of the Authority should be confirmed and the Board authorized to levy a sales and use tax. The qualified voters in the initial territory voted in accordance with the following voting scheme:

> "The election shall be conducted so that votes are separately tabulated and canvassed and that the result is declared in separate units of election within the authority, as follows:
>
> "(1) the portion of the principal city inside the initial limits of the authority plus any incorporated cities or towns which are wholly located within the perimeter of the outer boundary of the principal city constitutes a unit of election;
>
> "(2) each designated election area created by a commissioners court constitutes a unit of election;

"(3) every other incorporated city or town wholly located within the initial limits of the authority shall constitute a unit of election."

In accordance with this scheme the election was held in twenty-nine election units in which votes were separately tabulated: (1) the City of Houston and ten cities encircled by Houston, (2) twenty-three incorporated cities and (3) five unincorporated areas. See the 1970 and estimated 1978 population of the units of election and the unincorporated area within the outer boundary of Houston. App. 27a.

Sec. 5(g), Art. 1118x provides that the Authority would cease to exist in units of election voting against confirmation and levy of the tax and continue to exist in units of election voting for such proposition but that the Authority would cease to exist in its entirety unless the vote was favorable in the principal city unit of election.

Sixteen of the twenty-three cities[4] and three of the unincorporated units voted against confirmation and the sales tax and were excluded from MTA. A majority of the voters in the Houston Unit voted for the issues and MTA was declared to be created and the sales tax authorized. A majority of the voters of Humble (including Plaintiff Voters) voted against confirmation and the tax, but the residents of Humble were included in MTA and subjected to the tax because their votes were counted with the votes in Houston. Unincorporated election unit

4. The seven cities voting for inclusion in the MTA were El Lago, Friendswood, Katy, Missouri City, Shoreacres, Taylor Lake Village, and Waller. Cities voting against MTA were Baytown, Deer Park, Galena Park, Jacinto City, Jersey Village, La Porte, Lomax, Morgan's Point, Nassau Bay, Pasadena, Pearland, Seabrook, South Houston, Stafford, Tomball, and Webster.

no. 3, which included part of the unincorporated area within the outer boundary of Houston, voted against and was excluded.

A brief description of the geography of Harris County will aid in understanding the application of the voting scheme. Map, App. 92a. In 1978, the boundaries of Houston were centrally located between the east and west lines of Harris County, but its south boundary generally coincided with the county line and its north boundary was from nine to fourteen miles from the north county line. By annexations over the years, the boundaries of Houston proper had enclosed the cities of Bellaire, West University Place, Southside Place, Bunker Hill, Hedwig Village, Hunters Creek, Piney Point, Hillshire and Spring Valley.

In 1965, Houston annexed a strip of land beginning at its northeast corner, located northeast of Galena Park, and continuing northeasterly along West Canal, Sheldon Reservoir and Lake Houston and then continuing westerly to encircle Humble and join with the Houston Intercontinental Airport, west of Humble. The airport area is connected to the boundary of Houston proper by a long narrow strip of land. On the south, Humble abuts a 10-foot strip which is in Houston. To the south, southeast and southwest, this 10-foot strip abuts a large unincorporated area which is within the outer boundary of Houston. Except for the Houston strip, Humble is surrounded by unincorporated areas and separated from Houston proper by several miles. A part of Unincorporated Election Unit No. 2 and a part of Unincorporated Election Unit No. 3 are located in the unincorporated area which is within the outer boundary of Houston. Map, App. 93a. Unit No. 3 voted against and was excluded.

Houston completely surrounds the cities of Jacinto City and Galena Park. In 1913 Houston annexed a strip 5,000 feet wide, lying on both sides of Buffalo Bayou, a distance of 2,500 feet from the thread of the stream, from Houston's eastern boundary easterly a distance of twenty miles for navigation and wharfage purposes. This strip adjoins the south line of Galena Park. In 1977 Houston annexed the same 5,000 feet wide strip, except enumerated industrial districts, for all purposes. In 1951, Houston annexed an area extending from its boundaries north and east of Jacinto City and Galena Park southerly to a point located 2,500 feet from the center line of Buffalo Bayou. These two cities are surrounded entirely by the outer boundary of Houston for all purposes except for approximately 600 feet which is within the territory annexed by Houston for navigation and wharfage. The jurisdiction of Houston over the area annexed for navigation and wharfage is exclusive. Map, App. 94a. Jacinto City and Galena Park voted against and were excluded.

The original act of Art. 1118x was enacted in 1973. Tex. Laws 1973, ch. 141, p. 302. Sec. 5 of the 1973 Act required the original board of directors to call an election to submit to all of the qualified voters in the authority the question of creation of the authority and levy of a motor vehicle emission tax. If a majority of votes cast in the entire area of the authority was against creation and levy of a motor vehicle emission tax, confirmation and the tax were defeated.

In 1973, the governing body of Houston proposed and created Houston Area Rapid Transit Authority (HARTA), a rapid transit authority encompassing all of Harris County. Confirmation of HARTA and authority to levy

a tax was submitted to all voters in Harris County (as required by the statute) and was "miserably" defeated at an election in November, 1973. At the time, Houston was served by a privately owned transit system. Shortly after a new mayor took office in 1974, Houston purchased the privately owned transit system and operated the system throughout the new administration. A major priority in the administration was to secure legislative changes in the provision of the 1973 Act requiring an authority-wide election.

In 1975, the Houston administration proposed and won approval of legislation changing the requirement for authority-wide approval to one where Houston would have a much greater chance of winning approval of a transit authority by the voters. The Texas Legislature amended the 1973 Act to substitute Houston for Harris County as the controlling unit of election by creating the three separate units of election heretofore described and requiring the Commissioners Court to create not more than five designated election units in the unincorporated portion of the County. Tex. Laws, 1975, ch. 712, p. 2273. The amendment also provided that in units of election where the majority of the votes cast was in favor of creation and tax, the authority should continue to exist and be comprised of those units; but in those units of election where the majority of votes cast was against confirmation and levy of the tax, the authority should cease to exist, and unless "the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in its entirety." The 1977 Act repeated the 1975 amendment for the three separate units of election. Houston had been successful in its endeavor to insure that Houston would be the authority or there would not

be any. MTA purchased the Houston bus system. Since commencing operation MTA has furnished only bus service; no rail service. Humble residents have had the privilege of paying the sales and use tax. Bus service has not been provided to Humble.

Art. 1118y, V.T.C.S. (Tex. Laws, 1979, ch. 683, p. 1610) authorizes creation of a regional transportation authority in a metropolitan area which is defined as a federal standard statistical area having a population of more than 500,000, not more than 60% of which reside in cities of more than 300,000. Sec. 3 and Sec. 2(8). App. 74a.

The powers of a regional transportation authority and a metropolitan transit authority are virtually the same.

The statute defines "principal city" as a city having a population of at least 300,000. "Unit of election" is defined as any one of the following: (1) a principal city, (2) a designated unincorporated area created by the Commissioners Court, and (3) any other incorporated city located within the territory of an authority. The procedure for proposing creation of an authority and holding a confirmation and tax election is provided with the stipulation that the authority will continue only in units of election where a majority of the votes is cast in favor of creation and levy of the proposed tax. The statute is applicable to Dallas and Tarrant Counties and there are numerous cities and towns that are located within the perimeter of the outer boundary of the principal cities, Dallas and Fort Worth. Voters in inner cities in Dallas and Tarrant Counties are authorized to vote in separate election units. Voters in inner cities in Harris County are compelled to vote as a part of Houston.

All functions of a metropolitan transit authority are performable through its Board of Directors. Sec. 4 and 12. The establishment and make-up of the Board is governed by Sec. 6B. Depending upon the percentage of the population in the portion of the county outside of the principal city that resides within the authority, the Board consists of seven or nine or eleven members.[5] On a board of seven members, five are appointed by the mayor of the principal city, one by the mayors of the other incorporated cities and one by the Commissioners Court. On a nine member board, five are appointed by the mayor of the principal city, two by the mayors of the other incorporated cities and two by the Commissioners Court.[6] "Inner" cities were compelled to vote in the principal city unit but are not permitted to vote on the five member majority on the board; they vote with the "outside" cities.

After proclaiming that an authority shall exercise "public and essential governmental functions" (Sec. 6), the Legislature granted an authority the power: to levy and collect a sales and use tax, an income tax and all other types of taxes, except ad valorem; to issue both tax and revenue bonds; to acquire, hold, sell, etc. "real and personal property of every kind and nature whatsoever, and licenses, patents, rights and interests necessary, convenient

5. Population figures are required to be computed on the basis of the last preceding United States Census (1970 at all relevant times).

6. Inconsistently, Sec. 4(2) provides for the appointee[s] of the cities to be appointed by the mayors of all cities "within the county of the principal city" and Sec. 6B(a)(b) and (c) grant the power to the mayors of all cities "within the authority." Similarly, population in adjoining counties is excluded in determining the number of other city appointees[s]. The cities of Friendswood, Missouri City, and Waller lie in other counties and Katy is situated in three counties.

or useful for the full exercise" of all powers pursuant to the statute; to acquire, construct and maintain, etc. a system or systems within and without the boundaries of incorporated cities and political subdivisions, and for such purposes to "have the right to use the streets, alleys, roads, highways and other public ways, and to relocate, raise, reroute, change the grade of and alter the construction of" streets, alleys, highways, roads, railroads, electric lines and facilities, telegraph and telephone properties, pipelines and all other properties whether publicly or privately owned; to exercise the power of eminent domain, to acquire lands in fee simple and any lesser interest, including rights of way, rights of use of air space or subsurface space or any combination thereof; to promulgate penal regulations subject to fine and imprisonment; to employ its own peace officers with the power to make arrests; to make contracts, leases and agreements and accept grants from the United States of America; and to exercise any other rights necessary to establish and maintain a system of mass transportation throughout its area. The acquisition of land, the planning, construction, operation and policing of the authority's system and facilities and the exercise of all other powers granted are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. Sec. 6(p).

THE QUESTIONS ARE SUBSTANTIAL

Substantial federal questions are presented on the dilution and restriction of the fundamental right to vote. The Texas Court of Appeals held that all voters residing within a *proposed* political subdivision of a state do not have the right to an equal vote in the creation of the *proposed* political subdivision and the levy of a sales and

use tax, i.e., all of the voters do not have substantially identical interests in the creation of the political subdivision and the levy of the tax. Numerous decisions of this Court have considered electoral classifications in existing units of government but the precise issue here appears to be one of first impression.

All Voters Have Substantially Identical Interests

Ever since *Reynolds v. Sims,* 377 U.S. 533 (1964), it has been established that the Equal Protection Clause will not tolerate disparity in individual voting strength in electing state officials. The one person, one vote principle applies. In a short time, the concept of equal vote and principle of one person, one vote was extended to the election of local officials. *Hadley v. Junior College Dist. of Metro. Kansas City,* 397 U.S. 50 (1970); and *Avery v. Midland County,* 390 U.S. 474 (1968).

It soon became clear that the right to an equal vote and the one person, one vote principle of equal protection also applied to "single-shot" referenda cases. In such cases, this Court has held that when all citizens are affected in important ways by government decisions subject to a referendum, the Equal Protection Clause does not permit weighted voting. *Hill v. Stone,* 421 U.S. 289 (1975); *City of Phoenix v. Kolodziejski,* 399 U.S. 204 (1970); *Cipriano v. City of Houma,* 395 U.S. 701 (1969).

Cipriano, involving revenue bonds, held that it was apparent that all voters had an identity of interest in passage of the bond issue and that limitation of the right to vote to property taxpayers was plainly and invidiously discriminatory. The same identity of interest of all voters exists in approval or rejection of a sales tax.

The bond referenda cases and the reasoning in *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259 (1977) provide a blueprint for decision of this case. *Town of Lockport* first observes that principles applied to determine the fairness of election of legislative representatives are of limited relevance in analyzing the propriety of recognizing distinctive voter interests in a "single shot" referendum. In a referendum, the expression of the will of the voter is direct and the referendum puts one separate and distinct issue to the voters which is capable of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters. If it is found to have such a disportionate impact, the question is whether a state can recognize that impact either by limiting the franchise to voters specially affected or by giving their votes a special weight. 430 U.S. 266.

The reasoning is that a state cannot even consider giving a special weight to the votes of an identifiable group of voters until it is determined that the referendum issue will have a disproportionate impact on such group of voters. In the instant case, it is clear that all voters have substantially identical interests in creation of the authority and imposition of the tax; there is no disproportionate impact on an identifiable group of voters.

After reviewing bond referenda and special district cases, *Town of Lockport* concludes that the validity of voting classification depends upon whether the group interests are sufficiently different to justify total or partial withholding of the electoral franchise from one of them and that such decisions direct attention to two inquiries: (1) whether there is a genuine difference in the relevant

interests in the groups the state electoral classification has created, and (2) if so, whether any resulting enhancement of minority voting strength nonetheless amounts to invidious discrimination in violation of the Equal Protection Clause. 430 U.S. 267, 268. There is no genuine difference in the relevant interests of the groups here and the result of the voting scheme is a dilution, not enhancement, of minority voting strength. 430 U.S. 268.

It is clear in the instant case that all voters in the proposed authority have substantially identical interests in approving or rejecting the authority and the sales tax. The voting scheme denies equal protection.

The foregoing decisions consider "single-shot" referenda on revenue bonds, general obligation bonds and a county charter in *existing* political subdivisions of a state. The voting scheme here applies to an election on the *creation* of a political subdivision and imposition of a sales tax on its residents. This Court has not considered weighted voting in a referendum to create a political subdivision and impose a tax on all residents thereof. This is the case for the Court to affirm that the principles of *Cipriano, City of Phoenix* and *Town of Lockport* apply to a referendum on creation of a political subdivision of a state and imposition of a tax as well as an existing entity.

Article 1118x makes a distinction on voting rights that should be repudiated. Creation of an authority and levy of an initial tax hinge on a count of votes from numerous voting units. Once an authority is created, however, Article 1118x prohibits the issuance of bonds payable from taxes or the levy of any tax until the bonds or tax are authorized "by a majority vote of the qualified

voters of the authority," not a majority vote in each of numerous separate voting units. Sec. 11A(b) and Sec. 11B. No justification for this distinction exists.

The creation of an authority and imposition of a tax will not have a disproportionate impact on an identifiable group of voters; all voters in the proposed authority have substantially identical interests in creating the authority and being subjected to a tax. The stated purpose of Article 1118x is to provide for an area of homogenous interest (the metropolitan area) to have a transit authority and the power to tax to ameliorate the harm to public health posed by transportation resulting from population concentration. We know that all persons within the metropolitan area have substantially the same interests in the proposition of creation of an authority and levy of a tax because the state tells us so. Despite this stated purpose, however, the statute divides persons within the metropolitan area having substantially identical interests into arbitrary classes in areas having no rational relationship to the stated purpose.

While the voting scheme backfired on the stated purpose of having an area of homogenous interest, it created a transit authority for Houston. The successful lobby of Houston destroyed the identity of interest of the voters in the metropolitan area. The new legislation converted the political entity authorized by the statute from a metropolitan transit authority to a Houston transit authority. Most of the cities in MTA cannot be reached from Houston without crossing cities and unincorporated areas not within MTA. Most of the eastern part of Harris County (the largest concentration of population outside of Houston) is excluded. The 1975 Houston lobby effected a crazy-quilt geographic form—not a metropolitan

area. Governor Elbridge Gerry and the city fathers of Tuskegee, Alabama, would be proud of the result. *Gomillion v. Lightfoot,* 364 U.S. 339 (1960).

The weight of all of the voters in Humble and nine other cities enclosed by Houston was diluted. This Court should not permit this voting scheme to stand as a pattern for other jurisdictions.

Dicrimination—Enclave Unincorporated Area

The voting scheme amounts to invidious discrimination. Humble is an inner or enclave city—encircled by the Houston strip (outer boundary). Map, App. 93a. The Harris County Commissioners Court created five units of election in unincorporated areas in the initial territory. A large area (five to six times larger than Humble) in Unincorporated Units 2 and 3 lies east, southeast, south and southwest of Humble, between Humble and the boundary of Houston proper. Like Humble, this entire large area is situated within the outer boundary of Houston. Map, App. 93a. Humble voters voted in the principal city election unit, pitting their votes against the votes of Houston. The voters in Unit 2 and the voters in Unit 3 residing in the large inner unincorporated area each voted in a separate unit of election. Unit 3 voted against and was excluded. This large unincorporated area within the outer boundary of Houston must be traversed to travel from Houston proper to Humble. There is no compelling state interest or even rational basis that can justify this discrimination.

Discrimination—Enclave Cities

Nor is there any compelling state interest or rational basis for discrimination between the voters in Humble and

the voters in the cities of Galena Park and Jacinto City. Houston has exclusive jurisdiction of every foot of land surrounding Jacinto City and Galena Park. One cannot leave either city without crossing territory within the jurisdiction of Houston. The boundary of Houston for *all purposes* surrounds the two cities except for approximately 600 feet on the east side of Galena Park. This short distance abuts the 5,000 feet wide strip along Buffalo Bayou annexed by Houston in 1913 *for navigation and wharfage purposes.* Articles 1183, et seq., V.T.C.S.. In 1977 Houston annexed the same 5,000 feet wide strip, except for certain industrial districts created by Houston, *for all purposes.*

The jurisdiction of Houston over this 5,000 feet wide strip is exclusive; no other city can annex the territory or exercise any jurisdiction therein. Articles 1183-1187, V.T.C.S.; *City of Galena Park v. City of Houston,* 133 S.W.2d 162 (Tex. Civ. App. 1939, writ ref'd); *City of Nassau Bay v. City of Webster,* 600 S.W.2d 905, 909 (writ ref'd, n.r.e. 608 S.W.2d 618 [Tex. 1980]). There is no justification for the discrimination between the voters of Humble and those of Galena Park and Jacinto City. Galena Park and Jacinto City voted against and were excluded.

Discrimination—Outside Cities

The initial territory included twenty-three incorporated cities and towns (counting Galena Park and Jacinto City) located outside the boundary of Houston and five unincorporated area units of election. The weight of the voters in each of these election units was not diluted by the Houston vote. The weight of every voter in each unit

was equal. Sixteen of the twenty-three cities and three of the unincorporated units voted against MTA and the sales tax.

There is no equality or uniformity in the twenty-three city election units and the five unincorporated area units. The estimated 1978 population of the outside cities range from 752 for Morgan's Point to 105,209 for Pasadena. App. 27a. The five units of election in the unincorporated area were arbitrarily selected. No consideration to population, number of voters or quantity of land was given. The 1970 population of the units varied from 18,953 to 105,529. The 1978 estimated population of the units varied from 38,391 to 317,323. App. 27a. The only basis for the separate classification is that these election units were outside the boundary of Houston.

Rational Basis—Strict Scrutiny

Applying the "rational basis" test the Court of Appeals held that there was no discrimination. The rational bases for the voting scheme "envisaged" by the court below are based on the interests of municipal governments and not the interests of voters. Municipal governments do not vote or pay a sales and use tax. Voters do. The interest of every voter in Humble in a transit authority and a sales tax is identical with the interest of every other voter in the metropolitan area, not with the interest of the municipal government of Houston. The interest of a municipal government is not the identity of interest explained in *Town of Lockport, supra.* There is no basis, rational or otherwise, for a voting scheme that places an "inner" city and *not* an "inner" unincorporated area within the principal city unit. Every factor imagined in the

opinion of the Court of Appeals to support inclusion of "inner" cities in the principal city unit requires that "inner" unincorporated areas also be included. Irrespective of the test applied, there is no justification for the discriminatory voting scheme.

The principles and concepts fostered by *Reynolds v. Sims,* and the "compelling state interest" test or "strict scrutiny" apply to resolution of our Equal Protection questions.

The Texas Legislature provided for the creation of MTA and *the levy of a tax.* It predicated the formation of the authority and the levy of the tax upon the favorable vote of the people *supposedly* affected thereby. This Court has declared that the right to vote is a fundamental constitutional right preservative of all other rights. The Equal Protection Clause dictates that the right to vote if granted, cannot be denied, abridged or diluted by any State or political subdivision thereof. *Reynolds v. Sims,* 377 U.S. 533 (1964); *Williams v. Rhodes,* 393 U.S. 23 (1968); *Hadley v. Junior College Dist. of Metropolitan Kansas City,* 397 U.S. 50 (1970); *Dunn v. Blumstein,* 405 U.S. 330 (1972); *Evans v. Cornman,* 398 U.S. 419 (1970).

The compelling state interest measure must be applied if a classification has a real and appreciable impact on the fundamental right to vote. *Cipriano v. City of Houma,* 395 U.S. 701 (1969); *City of Phoenix v. Kolodziejski,* 399 U.S. 204 (1970). "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote . . . wherever their home may be in that geographical unit." *Gray v. Sanders,* 372 U.S. 368, 379 (1963); "The

right to vote in an election is protected by the United States Constitution against a dilution or debasement." *Hadley v. Junior College Dist. of Metropolitan Kansas City,* 397 U.S. 50, 54 (1970); "Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Kramer v. Union Free School District,* 395 U.S. 621, 626 (1969); "This court has held that a State may not dilute a person's vote to give weight to other interests . . ." *Evans v. Cornman,* 398 U.S. 419, 422 (1970).

There is no compelling state interest or rational basis for the dilution of the weight of the voters of Humble. The dilution was equivalent to a denial of the right to vote. This Court should so hold.

Voting Schemes of Article 1118x and Article 1118y

The questioned voting scheme compelled Humble voters to vote in the principal city unit. Voters residing in cities within the outer boundary of Dallas and within the outer boundary of Fort Worth vote in separate election units on creating a regional transportation authority and levy of a tax. A metropolitan transit authority and a regional transportation authority have virtually the same powers and functions. A tax has the same effect on all voters. Voters in both areas are similarly situated. There is no basis for the discrimination.

The MTA Legislative Body

The management, control and operation of an authority and its properties are vested in a Board of Directors.

The Board's legislative powers have been described, *supra*, p. 11, 12. The Board is a legislative body. The Board has the power to levy any tax (including sales tax and income tax), except ad valorem; to issue both tax and revenue bonds; to exercise the power of eminent domain; to adopt penal regulations subject to fine and imprisonment; and to employ its own peace officers with the power to make arrests to enforce such penal regulations; to construct and maintain systems within and without the boundaries of incorporated cities; and to control, relocate, change the grade of and alter construction of streets, alleys, highways, etc.

At issue is the question reserved in *Sailors v. Board of Education of Kent*, 387 U.S. 105 (1967). This Court held that appointment of members of a county school board by boards of directors of school district within the county did not violate the Equal Protection Clause because the county board was essentially an administrative body, exercising few, if any, legislative powers. On these facts, this Court found no need to decide whether a state may constitute a local legislative body through the appointive rather than the elective process and reserved the question "for other cases such as *Moody v. Flowers*, (*Board of Supervisors v. Bianchi*), 387 U.S. 97, 87 S.Ct. 1544, 18 L.Ed.2d 643, which we have disposed of on jurisdictional grounds."

The Court of Appeals recognized that this Court has yet to determine whether officials exercising legislative functions must be chosen by popular election, but nevertheless held that Plaintiff Voters had not raised an Equal Protection question because all citizens within the transit authority are treated equal because no one has the

right to elect a director. 636 S.W.2d 484, 491. In the traditional sense, the Equal Protection Clause only protects persons similarly situated, but the opportunity for equal protection is not to be denied by a state providing for legislative officials to be appointed rather than elected. Inherent in the one person, one vote principle, is the premise that a legislative official must be elected. If this principle applies only to governing bodies required by a state to be elected, the principle can be effectively emasculated by a state providing for the Legislature and all legislative bodies of political subdivisions to be appointed.

Decisions subsequent to *Sailors* evidence that this issue is alive, but has not been authoritatively determined by this Court. In *Bianchi,* this Court dismissed two appeals for want of jurisdiction. On subsequent appeal to the Court of Appeals, it was held that a system in which the voters in each town in a county elected a "supervisor" to govern the town and the supervisors constituted the county board of government violated the principle of *Reynolds v. Sims. Bianchi v. Griffing,* 393 F.2d 457 (C.A. 2 1968).

This Court has upheld statutes restricting the right to vote for directors in special districts to landowners. *Ball v. James,* 451 U.S. 355, 101 S.Ct. 1811 (1981); *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.,* 410 U.S. 719 (1973); and *Associated Enterprises, Inc. v. Toltec Water Shed Improvement Dist.,* 410 U.S. 743 (1973). In *Salyer Land Co.* and *Associated Enterprises, Inc.,* the district boards exercised no functions meeting the criteria of important governmental functions having sufficient impact throughout the districts to justify application of the one person, one vote principle. *Hadley v.*

Junior College Dist. of Metropolitan Kansas City, 397 U.S. 50 (1970).

Ball held that the Arizona water reclamation district simply did not exercise the sort of governmental powers that invoke the strict demand of *Reynolds v. Sims,* observing that the district could not impose ad valorem property taxes or sales taxes, it could not enact any laws governing the conduct of citizens and it did not administer such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, health, or welfare services. 101 S.Ct. 1818. This emphasis on the power to tax suggests that members of a board with such power must be elected. MTA imposes a sales and use tax and has the power to impose an income tax or any other tax except ad valorem. MTA enacts laws punishable by penal offense and enforced by its own peace officers. MTA administers the normal function of laying out and maintaining streets, overpasses, underpasses, etc., and, comparing the taxes collected with the revenues derived from the bus service, MTA is conducting "welfare services." *Ball* points out that this Court had recognized that powers to contract for and staff projects, to condemn property and to issue bonds, standing alone, do not amount to the required general governmental authority to invoke the demand of *Reynolds.* (Fn. 11, p. 1818) MTA has these powers plus the powers above noted. Moreover, MTA is exempt from taxation (Sec. 17) while the Arizona district made ad varolem contributions to the state treasurer according to the same formula by which the state's private utilities pay property taxes. (Fn. 14, p. 1819)

The absence of the "vital and traditional authorities of cities and towns to levy ad valorem taxes, invoke the

power of eminent domain, and zone property for various types of uses" is emphasized in sustaining the denial of the right to vote to residents of a territory in which an adjoining city exercised extraterritorial jurisdiction. *Holt Civic Club v. City of Tuscaloosa,* 439 U.S. 60, 73 (1978). MTA has the power to tax and the power of eminent domain and other governmental powers broader than the power to zone property. Compare *Holt* with *Little Thunder v. South Dakota,* 518 F.2d 1253 (C.A. 8 1975), cited in *Holt.*

Voters in Humble were compelled to vote in the principal city unit of election on creation and imposition of a tax, but have no voice in appointing the five member majority of the board of directors. It is relegated to voting with cities that voted as separate units of election. Sec. 6B. Initially voters of MTA had absolutely no control over the membership of the board, and practically, they still do not. In 1979, Section 4(e) was amended to provide for voter recall of any director, but the requirements are so strict and cumbersome that the provision is rendered nugatory. Tex. Laws, 1979, ch. 629, p. 1427. The ironic audacity of the amendment is significant. Numerous recall provisions applicable to elected offices in Texas exist for various local governments. Recall, as with referendum, historically has been a reserved right of voters codified for protection of the voters as to a person or law found to be unacceptable to the commonweal. Recall, however, *presupposes* that the person subject to recall has been elected to office. It is, therefore, incongruous to the point of irony that MTA voters may (if they can overcome the strictures of Sec. 4(e)) recall an MTA director, but are not privileged to fulfill the basic

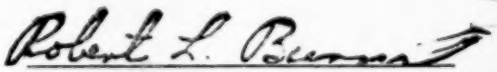
right in which recall historically has its roots and elect a replacement or an entire board.

This is the time for this Court to decide the question reserved in *Sailors*.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,



ROBERT L. BURNS
Ten Ten Lamar Building
Suite 1111
Houston, Texas 77002
(713) 654-4454

Counsel for Appellants

Of Counsel:

JOHN O. HOYT
P. O. Box 186
Humble, Texas 77338

City Attorney

PROOF OF SERVICE

I hereby certify that on the 27 day of June, 1983, three copies of the Jurisdictional Statement were deposited in a United States Post Office or mailbox, with first class postage prepaid, addressed to Honorable Jonathan Day, North Tower Pennzoil Place, 700 Milam, Suite 900, Houston, Texas 77002, attorney for Appellee, Metropolitan Transit Authority, and that three copies of the Jurisdictional Statement were deposited in the United States Post Office or mailbox, with first class postage prepaid, addressed to the Honorable Jim Mattox, Attorney General of Texas, and Honorable Bradley Seals, Assistant Attorney General, P. O. Box 12548, Capitol Station, Austin, Texas 78711, attorneys for Appellees, Bob Bullock and the State of Texas. I further certify that all parties required to be served have been served.

R. L. Burns

ROBERT L. BURNS

APPENDIX

APPENDIX

Judgment

IN THE COURT OF APPEALS
THIRD SUPREME JUDICIAL DISTRICT OF TEXAS
AT AUSTIN

JUDGMENT RENDERED JUNE 2, 1982

NO. 13,390

CITY OF HUMBLE, ET AL.

v.

METROPOLITAN TRANSIT AUTHORITY, ET AL.

APPEAL FROM 53RD DISTRICT COURT
OF TRAVIS COUNTY

AFFIRMED—Opinion by Justice Shannon

THIS CAUSE came on to be heard on the transcript of the record and same being inspected, because it is the opinion of the Court that there was no error in the trial court's judgment; IT IS THEREFORE considered, adjudged and ordered that the judgment of the trial court be and same is hereby in all things affirmed. It is FURTHER ordered that appellants, City of Humble, Wilson's Superette, Inc., Wilson Archer, Jerry Hamilton and Ellis L. Herron, as principal, and Lawyers Surety Corporation, 1437 Esperson Buildings, Houston, Texas, as surety on the cost bond herein, pay all cost in this behalf expended and that this decision be certified below for observance.

Opinion

IN THE COURT OF APPEALS
THIRD SUPREME JUDICIAL DISTRICT OF TEXAS
AT AUSTIN

NO. 13,390

CITY OF HUMBLE, ET AL.,
Appellants

v.

METROPOLITAN TRANSIT AUTHORITY, ET AL.,
Appellees

FROM THE DISTRICT COURT OF TRAVIS COUNTY,
53RD JUDICIAL DISTRICT NO. 283,604,
HONORABLE HERMAN JONES, JUDGE

Appellants, City of Humble, and others[1] filed suit in the district court of Travis County against the Metropolitan Transit Authority seeking a declaratory judgment pursuant to Tex. Rev. Civ. Stat. Ann. art. 2524-1 (1965). Metropolitan Transit Authority, sometimes referred to as "MTA" or "the authority," is a public body created pursuant to Tex. Rev. Civ. Stat. Ann. art. 1118x (Supp. 1982) for the purpose of providing mass transit for the Houston metropolitan area. By their suit appellants sought

1. Other appellants are Wilson's Superette, Inc., a business within the City of Humble and Wilson Archer, Jerry Hamilton, and Ellis L. Herron, all voting residents of Humble.

a declaration that art. 1118x is void and unconstitutional; that the MTA is without legal existence; that the authority is without power to collect a sales and use tax or spend the proceeds from the tax; and that the Comptroller of Texas is not authorized to administer and collect the sales and use tax. After a bench trial, the district court rendered judgment that appellants take nothing. This Court will affirm that judgment.

Article 1118x was enacted in 1973[2] to help the state's urban areas remedy their ever-expanding problems[3] such

---

2. Article 1118x has been amended in each subsequent session of the legislature. *See, e.g.*, 1975 Tex. Gen. Laws, ch. 712, at 2273; 1977 Tex. Gen. Laws, ch. 863, at 2168; 1979 Tex. Gen. Laws, ch. 629, at 1427; 1981 Tex. Gen. Laws, ch. 858, at 3261.

3. The legislature made certain findings included in the Act which state:

(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

(b) The concentration of population in such areas is accompanied by a correnspponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizens and the economic life of the areas;

(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the quality of the ambient air therein and reducing vehicular traffic congestion; and

as traffic congestion and air pollution which resulted in part from the lack of mass transit systems in those areas. Section 3(e) of the Act provides that the governing body of the principal city in a metropolitan area may create a transit authority by ordinance after a public hearing. After the governing body of a principal city creates a transit authority and constitutes a transit authority board, an election may be called by that board to confirm the existence of the authority and to authorize levy of a tax to finance the authority. The election is held within an area known as the "initial territory"[4] of the authority, but the statute requires more than a simple majority of votes within the "initial territory" to confirm the authority and authorize the tax.

The statute divides the "initial territory" of the authority into three categories of voting units. These units are:

> (1) the portion of the principal city inside the initial limits of the authority plus any incorporated cities or towns which are wholly located within that perimeter of the outer boundary of the principal city constitutes a unit of election;
>
> (2) each designated election area created by a commissioners court constitutes a unit of election;

(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any persons the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

Tex. Rev. Civ. Stat. Ann. art. 1118x, § 1 (Supp. 1982).

4. The Act states an "initial territory" of an authority "shall be all the territory included in the county in which the major portion of the principal city is situated, plus any additional territory that is in an adjacent county and is included in the [authorizing] ordinance or resolution." Tex. Rev. Civ. Stat. Ann. art. 1118x, § 3(b) (Supp. 1982).

> (3) every other incorporated city or town wholly located within the initial limits of the authority shall constitute a unit of election.

Tex. Rev. Civ. Stat. Ann. art. 1118x, § 5(f) (Supp. 1982).

The Act, then, provides for an indefinite number of voting units in addition to the single unit formed by the outer perimeter of the principal city. The number of voting units, in addition to the principal city unit, depends on the number of units created by the commissioners courts of the counties included within the "initial territory" and on the number of incorporated cities or towns outside the outer boundary of the principal city but within the "initial territory."

In this appeal, the statutory election scheme resulted in the creation of twenty-nine election units, each of which would be included in the MTA and be subject to the tax if a majority of voters within a given unit voted *for* confirmation. These units were:

(1) *one* election unit formed by the city of Houston and *all* cities wholly within the outer boundary of Houston: Bellaire, West University Place, Southside Place, Bunker Hill, Hedwig, Hillshire, Hunters Creek, Piney Point, Spring Valley, and *Humble;*

(2) *five* election units established by the commissioners court of Harris County encompassing all unincorporated territory within Harris County; and

(3) *twenty-three* election units comprised of all cities within the "initial territory" of the authority but partially or completely *outside* the city limits of Houston: Baytown, Deer Park, El Lago, Friendswood, Galena Park, Jacinto City, Jersey Village, Katy, La Porte, Lomax, Missouri

City, Morgan's Point, Nassau Bay, Pasadena, Pearland, Seabrook, Shoreacres, South Houston, Stafford, Taylor Lake Village, Tomball, Waller, and Webster.

A confirmation election pursuant to § 5 of art. 1118x was held on August 12, 1978. A majority of voters in the principal city voting unit of Houston and other enclave cities (including Humble) confirmed the MTA and the tax. Two of the five election units in unincorporated areas of Harris County approved the MTA and the tax, and a majority in seven of the twenty-three outlying incorporated cities elected for inclusion in the Authority.[5]

A majority of votes in the precincts of Humble were cast against the MTA. The vote in the Humble precincts, however, was pooled with the total vote in the principal city voting unit which overwhelmingly opted for MTA. Humble was therefore included in the MTA and subject to the sales and use tax.

In their first two points of error, appellants claim the statutory scheme of voting created in § 5(f) of art. 1118x violates the equal protection provision of the Fourteenth Amendment of the Constitution of the United States and art. I, § 3 of the Constitution of Texas. Specifically, appellants allege § 5(f) discriminates against qualified voters and residents of the cities located within the outer boundary of Houston, because those residents' votes are diluted when pooled with the large number of Houston votes, while the votes of residents of cities *outside* the Houston city limits are tabulated separately in each city.

---

5. The seven cities voting *for* inclusion in the MTA were El Lago, Friendswood, Katy, Missouri City, Shoreacres, Taylor Lake Village, and Waller. Cities voting *against* MTA were Baytown, Deer Park, Galena Park, Jacinto City, Jersey Village, La Porte, Lomax, Morgan's Point, Nassau Bay, Pasadena, Pearland, Seabrook, South Houston, Stafford, Tomball, and Webster.

In addition, appellants contend the statutory voting scheme denies residents of the "inner" cities equal protection because the scheme violates the constitutional principle of "one person, one vote." This claim is based on the fact that the population of the twenty-nine voting units created for the MTA confirmation election varies widely.[6]

---

6. The population of the twenty-nine districts, based on the 1970 census and on 1978 estimates, is as follows:

VOTING UNIT	1970	1978
HOUSTON (1)	1.3 million (approx.)	1.7 million (approx.)
COUNTY UNITS: (5)		
#1	32,399	141,703
#2	105,529	317,323
#3	58,406	113,292
#4	22,963	38,391
#5	18,953	67,946
SEPARATE INCORPORATED CITIES: (23)		
BAYTOWN	43,980	48,114
DEER PARK	12,773	21,214
EL LAGO	949	3,500
FRIENDSWOOD	7,433	8,850
GALENA PARK	10,479	9,329
JACINTO CITY	9,563	10,397
JERSEY VILLAGE	765	3,297
KATY	2,596	4,309
LA PORTE	7,149	8,899
LOMAX	893	2,964
MISSOURI CITY	4,136	13,520
MORGANS POINT	593	752
NASSAU BAY	2,240	4,510
PASADENA	89,277	105,209
PEARLAND	6,444	12,234
SEABROOK	3,811	5,760
SHOREACRES	1,872	1,662
SOUTH HOUSTON	11,527	12,996
STAFFORD	2,905	13,147
TAYLOR LAKE VILLAGE	1,798	1,819
TOMBALL	2,734	3,817
WALLER	1,123	1,365
WEBSTER	2,231	3,108

A statute is presumed constitutional. The Supreme Court of Texas, quoting Middleton v. Texas Power & Light Co., 249 U.S. 152 (1919), has stated "[t]here is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds." Texas National Guard Armory Board v. McCraw, 126 S.W.2d 627, 634 (Tex. 1939); *see also* Town of Lockport v. Citizens for Community Action, 430 U.S. 259, 272 (1977). This Court is obliged, if possible, to construe a statute in a manner sustaining its constitutionality. Key Western Life Insurance Co. v. State Board of Insurance, 350 S.W.2d 839, 849 (Tex. 1961). A statute does not violate the equal protection guarantee of the United States or Texas constitutions if there is a rational basis for the classifications in the statute. Texas Women's University v. Chayklintaste, 530 S.W.2d 927, 928 (Tex. 1975). A rational basis for a statutory classification exists if any state of facts may be reasonably conceived to justify the scheme. Carl v. South San Antonio Independent School District, 561 S.W.2d 560, 563 (Tex. Civ. App. 1978, writ ref'd n.r.e.) (quoting McGowan v. Maryland, 366 U.S. 420 (1961)).

Situations may be envisaged which justify the statutory voting scheme set forth in art. 1118x. Enclave cities incorporated within a larger principal city, such as Houston, have virtually identical interests with the larger city in the development of a mass transit system. Small incorporated cities located wholly within the city limits of a principal city are often physically indistinguishable from the larger city, separated only by legal boundaries. The larger city and its "inner" cities are often inter-

connected by an extensive network of streets. Pedestrian and automobile traffic moves freely between these units, and the persons living in the various cities conduct commercial and social activities across city limit lines with little or no regard for a particular city's jurisdiction.

Permitting each inner city to vote for or against a transit system as an individual unit would most probably impair the success of a comprehensive rapid transit system. Transit system routes, at great expense, would have to be designed around non-participating inner cities. Furthermore, residents of non-participating enclave cities could readily use the system without bearing their proportionate share of the tax which supports the system.

For the purposes of developing a comprehensive urban mass transit system, our view is that the legislature acted rationally in authorizing creation of a principal city voting unit in which the votes of enclave city residents, whose interest in a rapid-transit system would be virtually identical to that of residents of the larger city, were tabulated with the votes of the principal city.[7]

Cities lying outside the principal city's limits also might have a similar interest in access to a mass-transit system. However, these localities are not situated within the inner city, and the substantial success of the mass-transit system would not be impaired if these cities elected not to participate. Because of their relative geographical distance from the principal city, residents of the outer cities which chose not to join the authority could not avail themselves of the system's service as easily as residents of the inner city. While some residents might disagree with the results of the legislature's line-drawing in art. 1118x, those lines,

7. See 1977 Tex. Gen. Laws, ch. 863, § 5(f)(1), at 2172.

in our view, were rationally drawn and do not violate equal protection.

Appelants allege a further violation of equal protection in that the MTA voting units created in compliance with art. 1118x violate the federal constitutional guarantee of "one person, one vote."[8] The "one person, one vote" doctrine requires that voting districts for the election of governmental representatives on the national, state, and local levels be substantially equal in population. *See generally* Wesberry v. Sanders, 376 U.S. 1 (1964) (requiring population equality in U.S. Congressional districts); Reynolds v. Sims, 377 U.S. 533 (1964) (similar requirement for state legislative districts); Avery v. Midland County, 390 U.S. 474 (1968) (requirement applied to county commissioners court); Hadley v. Junior College District, 397 U.S. 50 (1970) (requirement applied to districts for junior college trustees). The requirement applies only to election districts of officials to those national, state, and local units which exercise "general governmental powers." Avery v. Midland County, 390 U.S. at 485-6. The Supreme Court has refused to extend the "one person, one vote" requirement to governmental bodies created for more limited purposes. Salyer Land Co. v. Tulare Water District, 410 U.S. 719 (1973) ("one person, one vote" not applicable to election of trustees for water storage district); Ball v. James, 451 U.S. 355 (1981) (requirement not applicable to election of directors for water

8. Justice Douglas created the term in his majority opinion in Gray v. Sanders, 372 U.S. 368, 381 (1963): "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."

In his concurring opinion in the case, Justice Stewart commented, "Within a given constituency, there can be no room for but a single constitutional rule—one voter, one vote." *Id.* at 382.

storage and electrical power district affecting large percentage of Arizona citizens).

Furthermore, the present appeal may be distinguished from the traditional "one person, one vote" cases because the election districts in the present case were not created for election of governmental officials. The units created by art. 1118x are for a referendum-type election involving voting on a particular *issue*, rather than on a candidate seeking to represent a particular constituency. The applicability of the "one person, one vote" doctrine to these types of elections was discussed by the Supreme Court in Town of Lockport v. Citizens for Community Action, 430 U.S. 259 (1977) in which the Court commented:

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interests in a "single-shot" referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives—instead of sending legislators off to the state capital to vote on a multitude of issues, the referendum puts one discrete issue to the voters. That issue is capable, at least, of being analyzed to determine whether its adoption or rejection will have a disproportionate impact to an identifiable group of voters.

Id. at 266. The precise question in *Lockport* was whether the state could require separate majorities of city and non-city voters, rather than a simple majority of all voters

in a county, to approve a proposed county charter. The Court held such a voting scheme did not violate equal protection because the interests of city and non-city voters in approving a new county charter differed sufficiently to justify the separate majority approval requirement of the statute.

Under the rationale of *Lockport,* the voting scheme created in art. 1118x is constitutional. This scheme recognizes the distinctive interests of voters living in incorporated cities inside the principal city's outer limits (whose interests are substantially identical with residents of the principal city) and voters living in cities located outside the perimeter of the principal city. The voters of the "enclave" cities are not *denied* the right to vote in the transit authority referendum; their votes are sensibly counted as part of the principal city's votes because of these voters' identity of interest.

Basically, Humble complains of its inclusion in the principal city voting unit because of its relative distance from Houston compared to other "enclave" cities. While Humble may have characteristics similar to other outlying cities which voted separately on the MTA issue, Humble undisputably is encompassed by the outer boundary of Houston. Humble and its residents simply suffer the pinch of being included within a constitutionally permissible classification. Appellees refer to language from a Supreme Court case that is pertinent to this appeal:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to

> mark where the change takes place. Looked at by itself, without regard to the necessity behind it, the line or point seems arbitrary. It might as well, or nearly as well, be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Louisville Gas Co. v. Coleman, 277 U.S. 32, 41 (1928) (Holmes, J., dissenting) *quoted* in Village of Belle Terre v. Borras, 416 U.S. 1, 8 n.5 (1974). Although appellants may have preferred that the legislature draw the line more strictly to exclude Humble or more leniently to include other cities outside Houston's city limits, appellants' dissatisfaction is not grounds for invalidating the statute if the class which included Humble is constitutionally justifiable.

By point of error three, appellants argue art. 1118x violates the Fourteenth Amendment of the United States Constitution and art. I, § 3 of the Texas Constitution because the statute requires the board of directors of a rapid-transit authority be appointed, rather than elected. The statute specifically provides that the mayor of the principal city, the commissioners court of the principal city's county, and the mayors of other incorporated cities besides the principal city within an authority each may appoint a specified number of directors. Art. 1118x, §§ 4(a), 6B.

The MTA is authorized to exercise powers necessary for the creation and maintenance of a mass transit system, including the right to levy and collect taxes, issue tax and revenue bonds, and promulgate penal regulations

relating to the use of the transit system. Further the MTA is authorized to exercise the power of eminent domain. *See generally* art. 1118x, § 6. Appellants urge that the appointment of directors, rather than their election by the public, is constitutionally impermissible because of the range of powers the directors may exercise.

Initially, appellants are advancing an improper constitutional argument. The basis for an equal protection violation is that similarly situated individuals are treated differently by the government. See L. Tribe, *American Constitutional Law* § 16-1, at 993 (1978). While appellants may believe the appointment scheme violates some constitutional command, no cognizable equal protection violation exists under this aspect of art. 1118x because all citizens within the transit authority are treated equally, *i.e.*, no one has the right to elect a director. No impermissible statutory discrimination exists because *all* persons affected by the statute are deprived of the right appellants assert.

Regarding the substantive merits of appellants' claim, the Supreme Court has not recognized a constitutional requirement that public officials be elected rather than appointed. In Sailors v. Board of Education, 387 U.S. 105, 108 (1967) the Court held the U.S. Constitution does not require the election of public officials who exercise "non-legislative" functions. The Court has yet to decide whether officials exercising "legislative" functions must be chosen by popular election.

In this regard, Prof. Tribe has stated:

> In the area of voting, it is clear that government has wide discretion, at least at the state and local levels, to avoid granting public participation through

> the franchise—by employing appointed officials rather than elected ones, for example. . . . Thus, while the Supreme Court has never required a state to hold elections for any particular office, "once the franchise is granted to the electorate, lines may not be drawn that are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."

L. Tribe, *supra* § 16-10, at 1007. The legislature, in art. 1118x, permissibly refused to grant the franchise for the purposes of electing the MTA directors.

Appellants contend by points of error four and five that art. 1118x violates the state constitutional prohibition against local or special laws. Tex. Const. art. III, § 56. Specifically, appellants assert §§ 3(a) and (b) of art. 1118x creates a closed class of cities which may establish a rapid-transit authority under the Act.

Subsections (a) and (b) of § 3, as it existed in 1977, provided in relevant part:

> (a) The governing body of a principal city in a metropolitan area may, on its own motion, shall, as provided in Subsection (b) of this section, and shall, upon being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the manner prescribed in this section.
>
> (b) Such governing body shall by ordinance or resolution fix a time before December 1, 1977, and a place for holding a public hearing on the question of creating an authority. The governing body also shall by ordinance, or resolution, after receipt of a petition as provided in Subsection (a) of this section, and may, on its own motion fix a time and place for holding a public hearing on a proposal to create an authority.

1977 Tex. Gen. Laws, ch. 863, § 3, at 2169-70. Appellants argue the December 1, 1977 date in Subsection (b) precludes the governing body of a city from creating a transit authority if it did not hold a public hearing by that date. Appellants misapprehend the meaning of the statute.

This Court is charged to construe a statute so as to uphold its validity, if possible. While Subsections (a) and (b) may not be "models of draftsmanship," they do not, in our opinion, create a closed class. This Court reads the statute to mean that the governing body of a principal city *must* hold a hearing on the creation of a transit authority by December 1, 1977 if that principal city is located in a "metropolitan area"[9] existing *on the effective date of the Act.*

If the governing body of a principal city is situated in an area which qualifies as a "metropolitan area" *after* the effective date of the Act, that governing body *may* institute proceedings to create an authority on its own motion, and must institute those proceedings upon being presented with a proper petition.

It is plain, we think, that any city in the future may create a transit authority if it is located in a "metropoli-

9. The 1977 Act defined "metropolitan area" as:

> any area within the State of Texas having a population density of not less than 250 persons per square mile and containing not less than 51 per cent of the incorporated territory comprising a city having a population of not less than 600,000 inhabitants according to the last preceding or any future federal census, and in which there may be situated other incorporated cities, towns and villages and the suburban areas and environs thereof; provided, however, that bi-county metropolitan areas as subsequently defined herein, are not included or in any way affected by by this Act.

1977 Tex. Gen. Laws, ch. 863, § 2(a), at 2169.

tan area" qualifying as such under the statute. Although a "metropolitan area" as defined in the statute must include a city of not less than 600,000 inhabitants, the population requirement does not create a closed class. Any metropolitan area reaching that population figure in the future may qualify under the statute. While the 600,000 inhabitant population requirement does restrict the application of art. 1118x, the figure is a permissible standard for classification under the law. *See* Robinson v. Hill, 507 S.W.2d 521, 525-6 (Tex. 1974). The legislature could rationally determine that the powers granted in art. 1118x were necessary to enable cities with populations of 600,000 or greater to address their transportation problems.

Appellants complain in point of error six that art. 1118x violates art. III, § 35 of the Texas Constitution. That section prohibits any bill introduced in the legislature from containing more than one subject and requires that subject to be expressed in the bill's title. Appellants claim the title of the 1977 act amending art. 1118x failed to disclose an amendment in the Act permitting transit authorities to levy a sales and use tax.

Article 1118x, as amended by the legislature in 1975, allowed the board of directors of a transit authority to collect revenue through any kind of tax other than an ad valorem or sales and use tax. 1975 Tex. Gen. Laws, ch. 712, § 11A, at 2282. The 1977 amendments to art. 1118x authorized transit authority boards to levy a sales and use tax subject to subsequent approval by voters residing in an authority. 1977 Tex. Gen. Laws, ch. 863, §§ 11A(a), 11B(a), at 2183. The title of the 1977 act stated the act related to "the creation, administration,

and powers of metropolitan rapid transit authorities; amending Sections 1 through 17A of, and adding Sections 6C and 11B to [the original act]." *Id.* at 2168. The question presented is whether the lack of an express reference to a sales and use tax in this title violates § 35 of art. III of the Texas Constitution.

Section 35 is accorded liberal construction when applied to the title of an act amending prior legislation. The Supreme Court, addressing this issue, has written:

> The purpose of a title is to give a general statement of, and call attention to, the subject matter of an act, so that the legislators may be apprised of the subject of the legislation. With amendatory bills, it is settled that reference to the act or section to be amended is adequate, as long as the subject matter of the amendment is germane or reasonably related to the content of the original act. [citation omitted].
>
> There is no constitutional requirement that the caption of an amendatory act set out exactly what changes were made in the amended act, [citation omitted], so long as the subject of the amendatory act is not "remote" from the subject of the original act, as in Board of Water Engineers v. City of San Antonio, 155 Tex. 111, 283 S.W.2d 722 (1955). "It would be burdensome if not intolerable to require that the title [or caption of an act] should be as full as the act itself. The word 'title' implies that no such requirement exists." [citation omitted]. It is not necessary that the caption of an amendatory bill apprise the reader of the precise effects of the body of the bill, so long as the general subject of the amending bill is disclosed.

Smith v. Davis, 426 S.W.2d 827, 833 (Tex. 1968).

The title of the 1977 amending act discloses it adds § 11B, which authorizes a sales and use tax, to the prior act. Since § 11A of the prior act was entitled "General Powers of Taxation," the amending act does refer to the section to be amended. The 1977 amendment, in permitting an authority to levy a sales and use tax, is "germane or reasonably related" to the original act which gave transit authorities power to tax, although the original taxing power was more restrictive in that the only tax which could be assessed at that time was a motor vehicles emissions tax. The expansion of an authority's taxing power in subsequent acts is directly related to the subject of the original act.

The 1977 amendment is not the "remote" type of amendment invalidated in Board of Water Engineers v. City of San Antonio, 283 S.W.2d 722, 727 (Tex. 1955). In that case an amendment adding a provision to an existing statute was void because the amending act did not specify the section number to be added to the original act, and the additional section, a prohibition against removal of water from the Guadalupe and Comal River watersheds to points outside those watersheds, was not germane to the original act, which permitted the creation of water supply corporations. Section 11A of art. 1118x does not *assess* a sales and use tax on anyone, but instead provides an additional means by which transit authorities may raise revenue. Only a strained interpretation of art. 1118x would require a finding that legislative authorization of a sales and use tax is not germane or reasonably related to a broad statutory enactment prescribing the powers and duties of a mass-transit authority.

Appellants claim by point of error ten that the legislature's authorization of mass-transit authorities in art.

1118x is unconstitutional because the Constitution of Texas does not expressly grant power to the legislature to create these authorities. Appellants concede the state constitution is not a *grant* of power, but a limitation upon the power of the state to act. Therefore, absent an express or directly implied prohibition in that document, it follows the legislature is free to enact laws which it deems are in the best interest of the people of the State. *See* Shepherd v. San Jacinto Junior College District, 363 S.W.2d 742, 743 (Tex. 1963).

The Supreme Court has addressed an identical challenge to the legislature's authority to create an urban renewal agency.

> Appellants challenge the authority of the Legislature to create a public body corporate and politic to be known as an Urban Renewal Agency. They argue that the Legislature may create only those bodies politic specifically set out in the Constitution or which are authorized to conserve natural resources under Section 59 of Article 16 of our Constitution. They cite no authority to support their views, and we have found none.
>
> On the contrary, this Court upheld the delegation of authority to, and the actions of, the Housing Authority of Dallas in that slum-clearance-low-cost housing case. An analogous attack was made upon the National Guard Armory Board, a body politic and corporate, and upon the Texas Turnpike Authority. In both instances, the existence of the agencies and the delegation of authority to them was upheld.

Davis v. City of Lubbock, 326 S.W.2d 699, 710 (Tex. 1959) (footnote references omitted).

Appellants argue no Texas case has upheld creation of political subdivisions *with taxing power* which are not expressly authorized by the Constitution. This assertion ignores the holding of Sheperd v. San Jacinto Junior College District, *supra,* sustaining a junior college district's power, not specifically authorized by the Constitution, to levy an ad valorem tax on property owners within the district. Appellants acknowledge the disagreement between the majority and dissenting opinions in *Shepherd* focused on whether the junior college district could constitutionally assess an *ad valorem* property tax. See generally *Shepherd,* 363 S.W.2d at 760-81. Assessment of an ad valorem tax by a transit authority is specifically prohibited in § 11A(a) of art. 1118x. Although a transit authority created under art. 1118x has broad taxing power, this attribute of the statute does not remove it from the rule of the numerous cases in which the Supreme Court has sustained legislative creation of political subdivisions or agencies not specifically authorized by the Constitution. Appellants' point of error is overruled.

Appellants' other points of error have been considered and are overruled.

The judgment is affirmed.

Bob Shannon, Justice

Affirmed

Filed: June 2, 1982

Order Overruling Motion for Rehearing

IN THE COURT OF APPEALS
THIRD SUPREME JUDICIAL DISTRICT OF TEXAS
AT AUSTIN

ORDER MADE JULY 28, 1982

OVERRULING APPELLANTS' MOTION
FOR REHEARING

MOTION #17,920)

CAUSE #13,390)

City of Humble, et al.

v.

Metropolitan Transit Authority, et al.

Appeal from 53rd District Court of Travis County

Appellants' Motion for Rehearing

Motion is submitted and overruled.

Order Refusing Application for Writ of Error
and
Order Overruling Motion for Rehearing on Application for Writ of Error

IN THE SUPREME COURT OF TEXAS

No. C-1540

February 16, 1983

CITY OF HUMBLE ET AL.

v.

METROPOLITAN TRANSIT AUTHORITY ET AL.

From TRAVIS County, THIRD District.

Application of petitioner's for writ of error to the Court of Appeals for the Third Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, City of Humble et al., and their surety, Lawyers Surety Corporation, pay all costs incurred on this application.

No. C-1540

March 30, 1983

CITY OF HUMBLE ET AL.

v.

METROPOLITAN TRANSIT AUTHORITY ET AL.

From TRAVIS County, THIRD District.

Petitioners' motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

GARSON R. JACKSON, Clerk

By /s/ MARY M. WAKEFIELD
Deputy
Mary M. Wakefield

Notice of Appeal

NO. 13,390

IN THE COURT OF CIVIL APPEALS
FOR THE THIRD SUPREME
JUDICIAL DISTRICT OF TEXAS

Sitting at Austin

CITY OF HUMBLE, et al,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al,
Appellees.

(Filed May 4, 1983)

NOTICE OF APPEAL
TO THE
SUPREME COURT OF THE UNITED STATES

Notice hereby is given that the City of Humble, Wilson Archer, Jerry Hamilton, Ellis L. Herron and Wilson's Superette, Inc., Appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Appeals for the Third Supreme Judicial District of Texas, rendered and entered in this action on June 2, 1982, such judgment affirming the judgment of the lower court (district court) that Appellants take nothing.

Appellants' motion for rehearing was overruled by the Court of Appeals on July 28, 1982. Appellants' application for writ of error to the Supreme Court of Texas was refused on February 16, 1983, and their motion for rehearing on such application was overruled on March 30, 1983.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted,

SEARS AND BURNS
Ten Ten Lamar Building
Suite 1111
Houston, Texas 77002
(713) 654-4454

By /s/ ROBERT L. BURNS
Robert L. Burns
(Bar No. 03452000)
Counsel for Appellants

PROOF OF SERVICE

I hereby certify that on the 2nd day of May, 1983, one copy of the attached and foregoing Notice of Appeal was deposited in a United States Post Office or mailbox, with first class postage prepaid, addressed to Honorable Jonathan Day, North Tower Pennzoil Place, 700 Milam, Suite 900, Houston, Texas 77002, attorney for Appellee, Metropolitan Transit Authority, and that one copy was de posited in the United States Post Office or mailbox, with first class postage prepaid, addressed to the Honorable Jim Mattox, Attorney General of Texas, and Honorable Bradley Seals, Assistant Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711, attorneys for Appellees, Bob Bullock and the State of Texas. I further certify that all parties required to be served have been served.

/s/ ROBERT L. BURNS
Robert L. Burns
Ten Ten Lamar Building
Suite 1111
Houston, Texas 77002

Attorney for Appellants

1970 and Estimated 1978 Populations

1. The Principal City Election Unit.

CITIES	1970	1978
HOUSTON	1,232,802	1,693,206
BELLAIRE	19,009	16,935
WEST UNIVERSITY PLACE	13,317	12,608
SOUTHSIDE PLACE	1,466	1,382
HUMBLE	3,278	6,568
BUNKER HILL	3,977	4,296
HEDWIG	3,255	3,915
HILSHIRE	627	750
HUNTERS CREEK	3,959	5,561
PINEY POINT	2,548	2,841
SPRING VALLEY	3,170	3,109

2. Separate Election Units — Cities and Towns.

CITIES	1970	1978
BAYTOWN	43,980	48,114
DEER PARK	12,773	21,214
EL LAGO	949	3,500
FRIENDSWOOD	7,433	8,850
GALENA PARK	10,479	9,329
JACINTO CITY	9,563	10,397
JERSEY VILLAGE	765	3,297
KATY	2,596	4,309
LA PORTE	7,149	8,899
LOMAX	893	2,964
MISSOURI CITY	4,136	13,520
MORGANS POINT	593	752
NASSAU BAY	2,240	4,510
PASADENA	89,277	105,209
PEARLAND	6,444	12,234
SEABROOK	3,811	5,760
SHOREACRES	1,872	1,662

SOUTH HOUSTON	11,527	12,996
STAFFORD	2,905	13,147
TAYLOR LAKE VILLAGE	1,798	1,819
TOMBALL	2,734	3,817
WALLER	1,123	1,365
WEBSTER	2,231	3,108

3. Unincorporated Area Election Units.

ELECTION UNITS	1970	1978
#1	32,399	141,703
#2	105,529	317,323
#3	58,406	113,292
#4	22,963	38,391
#5	18,953	67,946

4. Unincorporated Areas Within Houston's Outer Boundary.

WITHIN COUNTY ELECTION	1970	1978
UNIT NO. 2	3,921	20,407
UNIT NO. 3	28,218	55,921

Texas Laws 1977, ch. 683, p. 2168
Article 1118x Vernon's Texas Civil Statutes

Findings

"Section 1. The legislature finds that:

"(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

"(b) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

"(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizens and the economic life of the areas;

"(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the

quality of the ambient air therein and reducing vehicular traffic congestion; and

"(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any person the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

Definitions

"Sec. 2. The following words and terms, wherever used and referred to in this Act, have the following respective meanings, unless a different meaning clearly appears from the context:

"(a) 'Metropolitan area' means any area within the State of Texas having a population density of not less than 250 persons per square mile and containing not less than 51 percent of the incorporated territory comprising a city having a population of not less than 600,000 inhabitants according to the last preceding or any future federal census, and in which there may be situated other incorporated cities, towns and villages and the suburban areas and environs thereof; provided, however, that bi-county metropolitan areas as subsequently defined herein, are not included or in any way affected by this Act.

"(b) 'Principal city' means the city of largest population in a metropolitan area.

"(c) 'Authority' means a rapid transit authority created pursuant to the provisions of this Act.

"(d) 'Board' means the governing body of an authority.

"(e) 'Mass transit' means transportation of passengers and hand carried packages and/or baggage of said pas-

sengers by means of motor-bus, trolley coach, street railway, rail, suspended overhead rail, elevated railways, subways, or any other surface, overhead or underground transportation (except taxicabs), or by any combination of the foregoing.

"(f) 'System' means all real and personal property of every kind and nature whatsoever, owned or held at any time by an authority for mass transit purposes, including (without limiting the generality of the foregoing), land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars, and buses), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all such facilities.

"(g) 'Motor vehicle' means a vehicle self-propelled on two or more wheels by an internal combustion engine or motor over roadways other than fixed rails and tracks.

Creation of Rapid Transit Authority

"Sec. 3. (a) The governing body of a principal city in a metropolitan area may, on its own motion, shall, as provided in Subsection (b) of this section, and shall, upon being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the manner prescribed in this section.

"(b) Such governing body shall by ordinance or resolution fix a time before December 1, 1977, and a place

for holding a public hearing on the question of creating an authority. The governing body also shall by ordinance or resolution, after receipt of a petition as provided in Subsection (a) of this section, and may, on its own motion, fix a time and place for holding a public hearing on a proposal to create an authority. The ordinance or resolution shall define the boundaries of the area proposed to be included in such authority. The initial territory included in an authority shall be all the territory included in the county in which the major portion of the principal city is situated, plus any additional territory that is in an adjacent county and is included in the ordinance or resolution.

"(c) Notice of the time and place of such public hearing, including a description of the area proposed to be included in such authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in such metropolitan area, the first publication to be not less than 15 days prior to the date fixed for such hearing. The governing body of any principal city shall furnish to the Texas Mass Transportation Commission or any successor thereof, a copy of the notice described herein.

"(d) The governing body of the principal city shall conduct said hearing at the time and place specified in such notice, and may continue such hearing from day to day and from time to time until completed. Any interested person may appear and offer evidence for or against the creation of the proposed authority, and may present evidence as to whether or not the creation of such proposed authority and the construction and operation of a mass transit system in such metropolitan area

(1) would be of benefit to persons and property situated within the boundaries of the proposed authority, (2) would be of public utility, and (3) would be in the public interest, as well as any other facts bearing upon the creation of such an authority and the construction and operation of such system.

"(e) If, after hearing the evidence adduced at such hearing, the governing body of the principal city finds that the creation of such an authority, and the operation of such a system, would be of benefit to persons and property situated within the boundaries of the proposed authority, would be of public utility, and would be in the public interest, such governing body shall adopt an ordinance creating the authority and prescribing the territory to be included, but the actual territory included in the authority is subject to the results of the election provided for in this Act. The authority shall bear a name to be designated in the ordinance creating the authority and when so created and confirmed at an election held for that purpose, shall have and may exercise the powers authorized by this Act.

"(f) After such hearing by the governing body of the principal city, it shall submit the proposed plan to the governor's interagency transportation council for their review and comment.

Transit Authority Board

"Sec. 4. (a)(1) Until such time as the composition of the board is changed in accordance with other provisions of this Act, the management, control, and operation of an authority and its properties shall be vested in a board composed of five members, who shall be appointed

by the governing body of the principal city and shall serve for a term of two years.

"(2) In metropolitan areas where the principal city's population exceeds 1,200,000 according to the last preceding federal census or any federal census hereafter, the management, control, and operation of an authority and its properties shall be vested in a board composed of seven members, five of whom shall be appointed by the mayor of the principal city subject to confirmation by the governing body of the principal city, one of whom shall be appointed by the commissioners court of the county of the principal city, and one of whom shall be appointed jointly by the mayors of all incorporated municipalities within the county of the principal city except the principal city. Each member shall serve a term of two years. Upon confirmation, the board's composition shall remain the same except to the extent that it conflicts with the requirements of Section 6B of this Act. Until a confirmation and tax election are held, the principal city shall fund the board for purposes of research and planning.

"(b) All vacancies on the board, whether by death or resignation shall be filled for the remainder of the term in the manner provided for the original appointment. On expiration of the terms of office of the members of the board, all or any may be reappointed or another person may be appointed to replace a member for the succeeding term.

"(c) Each member of the board shall be entitled to the sum of $50 for each meeting of the board which he attends, not to exceed five meetings in any calendar month; and shall be reimbursed for his necessary and

reasonable expenses incurred in the discharge of his duties. The principal city shall pay, from taxes or other funds, the sums for attendance at meetings held before the authority has received any revenues, and shall reimburse members for necessary and reasonable expenses incurred by the members or the board prior to receipt of revenues by the authority, but the authority, after receiving revenues, shall reimburse the principal city of all payments and reimbursements made as provided in this subsection.

"(d) The members of the board, who shall be resident citizens and qualified voters of the authority, shall elect from among their number a chairman, a vice-chairman and a secretary, except that if the board is constituted in the manner provided in Subsection (c) of Section 6B of this Act, the chairman shall be selected as specified in that subsection. The board may appoint such assistant secretaries, either members or non-members of the board, as it deems necessary. The secretary and assistant secretaries shall, in addition to keeping the permanent records of all proceedings and transactions of the authority, perform such other duties as may be assigned to them by the board. No member of the board or officer or the authority shall be pecuniarily interested or benefitted, directly or indirectly, in any contract or agreement to which the authority is a party.

"(e) Any member of the board may be removed from office by a majority vote of the remaining members of the board for inefficiency, neglect of duty or malfeasance in office; provided, however, that the board shall furnish to such member a statement in writing of the nature of the charges as grounds for such removal which shall

become final unless the member, within 10 days, requests a hearing before the board and opportunity to be heard in person or through counsel. After any such hearing, if the board by a majority vote finds that the charges are true, then its decision shall be final.

"(f) The board shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman or the general manager may call special meetings as may be necessary. The board, when organized, shall by resolution spread upon the minutes, set the time, place and day of the regular meetings, and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings. A majority of the members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and action may be taken by the authority upon a vote of a majority of the board members present unless the bylaws require a larger number for a particular action.

Confirmation and Tax Election

"Sec. 5. (a) After the original board is organized, at such time as it deems implementation of the authority to be feasible, it shall call a confirmation and tax election in accordance with the provisions of this section.

"(b) Before ordering an election the board shall by order entered in its minutes determine the nature and rate of any tax that it desires to levy.

"(c) Before ordering an election, the board shall notify the commissioners court of each county included in whole or part within the initial territory of the authority of its

intention to do so. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated election areas in the unincorporated portion of the appropriate county. Each designated election area's outer boundaries, to the extent practicable, shall coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas. The total area of all designated election areas shall include all of the unincorporated area within the initial territory of the authority.

"(d) When the board orders a confirmation and tax election, it shall submit to the qualified voters within the authority the following proposition:

" 'Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?'

"(e) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held under the provisions of this Act shall be furnished to the Texas Mass Transportation Commission or its successor.

"(f) The election shall be conducted so that votes are separately tabulated and canvassed and that the result is declared in separate units of election within the authority, as follows:

"(1) the portion of the principal city inside the initial limits of the authority plus any incorporated cities or

towns which are wholly located within the perimeter of the outer boundary of the principal city constitutes a unit of election;

"(2) each designated election area created by a commissioners court constitutes a unit of election;

"(3) every other incorporated city or town wholly located within the initial limits of the authority shall constitute a unit of election.

"(g) Immediately after the election, the presiding judge of each election precinct shall return the results to the board, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue to exist and be comprised of those units. In those units of election where a majority of the votes cast is against the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall cease to exist. Unless the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in its entirety. If the votes cast are such that the authority will continue to exist, the board shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. A certified copy of the order shall be filled with the Texas Mass Transportation Commission or its successor and in the deed records of each county in which the authority is located.

"(h) If the votes cast are such that the authority ceases to exist in its entirety, the board shall enter an

order so declaring and file a certified copy of the order with the Texas Mass Transportation Commission or its successor, and the authority shall be dissolved.

"(i) The cost of the confirmation and tax election shall be paid by the principal city.

"(j) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authoritzed to function in accordance with the terms of this act, and the board may levy and collect the proposed tax within those limits.

"(k) If the continued existence of an authority is not confirmed by election within three years after the effective date of the ordinance creating the authority, the authority ceases to exist on the expiration of the three years.

Powers of the Authority

"Sec. 6. (a) The authority, when created and confirmed, shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, the following powers granted in this section.

"(b) The authority shall have perpetual succession.

"(c) The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.

"(d) The authority may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease or dispose of, real and personal property of every kind and nature whatsoever, and licenses, patents, rights and interests necessary, convenient or useful for the full exercise of any of its powers pursuant to the provisions of this Act.

"(e) The authority shall have the power to acquire, construct, complete, develop, own, operate and maintain a system or systems within its boundaries, and both within and without the boundaries of incorporated cities, towns and villages and political subdivisions, and for such purposes shall have the right to use the streets, alleys, roads, highways and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of, any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance and operation of the system, or to cause each and all of said things to be done at the authority's sole expense. The authority shall not proceed with any action to change, alter or damage the property or facilities of the state, its municipal corporations, agencies or political subdivisions or of owners rendering public services, or which shall disrupt such services being provided by others, or to otherwise inconvenience the owners of such property or facilities, without having first obtained the written consent of such owners or unless the authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. In the event

the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces, or to cause the same to be done by contractors of their own choosing, the authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the authority to such owners of the costs incurred by such owners in making such relocations, changes or alterations and/or in causing the same to be accomplished by such contractors.

"(f) In the event the authority, in exercising any of the powers conferred by this Act, makes necessary the relocation, adjustment, raising, lowering, rerouting or changing the grade of or altering the construction of any street, alley, highway or road, any railroad track, bridge or other facilities or properties, any electric lines, conduits or other facilities or properties, any telephone or telegraph lines, conduits or other facilities or properties, any gas transmission or distribution pipes, pipelines, mains or other facilities or properties, any water, sanitary sewer or storm sewer pipes, pipelines, mains or other facilities or properties, any cable television lines, cables, conduits or other facilities or properties, or any other pipelines and any facilities or properties relating thereto, any and all such relocations, adjustments, raising, lowering, rerouting or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the authority.

"(g) The authority shall have the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that such right shall not be exercised in a manner which would unduly interfere with interstate commerce or which would authorize the authority to run its vehicles on railroad tracks which are used to transport property.

"(h) Eminent domain proceedings brought by the authority shall be governed by the provisions of Title 52, Eminent Domain, Revised Civil Statutes of Texas, 1925, as they now exist or hereafter may be amended, insofar as such provisions are not inconsistent with this Act. Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the authority of the property or interest therein described in the resolution, and that such acquisition is necessary and proper for the construction, extension, improvement or development of the system and is in the public interest. The resolution of the authority shall be conclusive evidence of the public necessity of such proposed acquisition and that such real or personal property or interest therein is necessary for public use.

"(i) The authority shall have the power to enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of their respective facilities, installations and properties of whatever kind and character within the authority and to establish through routes, joint fares or transfer of passengers.

"(j) The authority shall establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of the system acquired, constructed, operated or maintained by the authority which shall be reasonable and nondiscriminatory and which, together with receipts from taxes collected by the authority, shall be sufficient to produce revenues adequate:

"(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

"(2) to pay the interest on and principal of all bonds issued by the authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

"(3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and

"(4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.

"(k) It is the intention of this Act that taxes levied and the rates, fares, tolls, charges, rents and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the authority by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control such taxes, rates, fares, tolls, charges, rents and other compensation, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of

the bonds issued hereunder that the state will not limit or alter the powers hereby vested in the authority to establish and collect such taxes, rates, fares, tolls, charges, rents and other compensation as will produce revenues sufficient to pay the items specified in Subdivisions (1), (2), (3) and (4), Subsection (j) of this subsection, or in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with such bonds, are fully met and discharged.

"(*l*) The authority may make contracts, leases and agreements with, and accept grants and loans from, the United States of America, its department and agencies, the State of Texas, its agencies, counties, municipalities and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

"(m) The authority may sell, lease, convey or otherwise dispose of any of its rights, interests or properties which are not needed for, or, in the case of leases, which are not inconsistent with, the efficient operation and

maintenance of the system. It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

"(n) The authority shall by resolution make all rules and regulations governing the use, operation and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable by the authority.

"(*o*) The authority shall have power to lease the system or any part thereof to, or contract for the use or operation of the system or any part thereof by, any operator; provided, however, that a lease of the entire system shall be subject to the written consent and approval of the governing body of the principal city.

"(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

"(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties.

[Addition of Territory Omitted]

* * *

Composition of the Board

"Sec. 6B. (a) If less than 50 percent of that part of the population of the county (the county in which not less than 51 percent of the incorporated area of the principal city is situated) which is outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority shall consist of the original five members or their successors plus one additional member to be appointed jointly by the mayors of all incorporated municipalities except the principal city within the authority as confirmed, and one other additional member to be appointed by the commissioners court of the county described in this subsection.

"(b) If more than 50 percent but less than 75 percent of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority consists of the original five members or their successors, plus two additional members to be appointed jointly by the mayors of all incorporated municipalities, except the principal city, located within the authority, and two other members appointed by the commissioners court of the county. Population figures shall be computed on the basis of the last preceding United States census.

(c) If 75 percent or more of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board consists of 11 members, including the original five members or their successors, two additional members appointed jointly by the mayors of all incorporated municipalities except the prin-

cipal city located within the authority, three other additional members appointed by the commissioners court of the county, and one member, who serves as chairman, who is appointed by the other ten members.

"(d) When this Act requires that the mayors of municipalities except the principal city appoint a member of the board, the mayor of the municipality of greatest population among the municipalities shall serve as chairman of an appointment board composed of the mayors of all appropriate municipalities and shall, by notice in writing to all members, call meetings of the appointment board as necessary to make the appointments. Appointments shall be made within 60 days after a position comes into existence or becomes vacant. If the boundaries of the authority at any time include unincorporated areas of a county other than the county described in Subsection (a) of this section, the county judge of the appropriate county is entitled to serve on the appointment board, with powers equal to the other members of the board, as if the unincorporated area of the county were a municipality and the county judge of that county were the mayor of the municipality.

"(e) The terms of office of all members of the board appointed after the confirmation and tax election are two years, except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the election, if an even number is to be appointed by the agency, and a bare majority of the first members appointed by an agency, if an odd number greater than one is to be appointed by the agency, are one year. In addition, the appointing agency may shorten the initial terms to make

the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be a qualified voter residing within the boundaries of the authority.

"(f) Vacancies on the board are filled by appointment by the same agency that made the original appointments for the vacant positions. Each member of the board whose term expires shall continue to serve until his successor has been appointed.

"(g) In the event the membership of the board must be increased under the provisions of this section, the board as previously constituted may continue to act as the governing board of the authority until the additional members have been appointed and seated.

Station or Terminal Complexes

"Sec. 6C. (a) The acquisition of any land or any interest in land pursuant to this Act; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities; and the exercise of any other powers granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity for public use and public benefit.

"(b) The authority shall have the right, power, and authority to acquire by grant, purchase, gift, devise, lease, or eminent domain proceedings and to own lands in fee

simple and any interest less than fee simple in, on, under, and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space or any combination thereof, adjacent or accessible to stations and other mass transit facilities, developed or to be developed by the authority, that may be required for or in aid of the development of one or more station or terminal complexes, as part of its mass transit system and may sell, lease, or otherwise transfer the same, or any part thereof, to individuals, corporations, or governmental entities, subject to the restrictions provided in this section.

[Regulations on Station or Terminal Complexes Omitted]

* * *

Bonds and Notes

"Sec. 7. (a) The authority shall have no power to assess, levy or collect any ad valorem taxes on property, nor to issue any bonds or notes secured by ad valorem tax revenues. The authority, however, shall have the full power to issue bonds and notes, from time to time and in such amounts as it shall consider necessary or appropriate, for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement or extension of such rapid transit system or systems and all properties thereof whether real, personal or mixed. All such bonds and notes shall be fully negotiable and may be made redeemable before maturity, at the option of the issuing authority, at such price or prices and under such terms and conditions as may be fixed by the issuing authority in the resolution authorizing such bonds or notes, and

may be sold at public or private sale whichever the board may deem more advantageous.

"(b) Prior to delivery thereof, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act and that they will be binding obligations of the authority issuing same, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds to the purchaser, they shall be incontestable.

"(c) In order to secure the payment of such bonds or notes, such authority shall have full power and authority to encumber and pledge all or any part of the revenue realized from any tax which the authority is authorized to levy, and all or any part of the revenues of its rapid transit system or systems, and to mortgage and encumber all or any part of the properties thereof, and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds and notes in any manner not inconsistent with the provisions of this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including motorbuses, transit cars and other vehicles, machinery and other equipment of any nature, and to acquire, use, hold or contract for any such property under any lease arrangement, chattel mortgage or conditional sale, including, but not limited to, transactions commonly

known as equipment trust transactions. Nothing herein shall be construed as prohibting any such authority from encumbering any one or more rapid transit systems for the purpose of purchasing, building, constructing, enlarging, extending, repairing or reconstructing, another one or more of said systems and purchasing necessary property, both real, personal and mixed, in connection therewith.

"(d) Refunding bonds or notes may be issued for the purposes and in the manner provided by general law, including, without limitation, Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

"(e) Whenever the revenues of any rapid transit system shall be encumbered under this Act, the expense of operation and maintenance, including all salaries, labor, materials and repairs necessary to render efficient service and every proper item of expense shall always be a first lien and charge against such revenues. The fares charged for transportation of passengers by any rapid transit system may be based on a zone system of determining fares or other fare classification determined by such authority to be reasonable.

"(f) All such bonds and notes shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations and insurance companies. Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of

Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and such bonds and notes shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons appurtenant thereto.

"(g) If revenue bonds are to be issued by an authority to acquire any existing transportation system, or any part thereof, and the owner thereof is willing to accept said revenue bonds in lieu of cash, then in that event the revenue bonds may be exchanged for the property or for the stock of a corporation owning the property to be dissolved simultaneously.

"(h) Bonds payable solely from revenues may be issued by resolution of the board, but no bonds, except refunding bonds, payable wholly or partially from taxes, may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.

Motor Vehicle Emission Taxes

"Sec. 8. (a) Subject to approval at an election, the board of an authority shall be authorized to levy and cause to be collected motor vehicle emission taxes as herein provided. No increase in taxes as originally authorized may be levied unless the increase is approved at an election. Such taxes shall be collected by the county tax assessor-collector of each county, situated in whole or in part within the authority from each motor vehicle owner whose residence is within such county and

within the authority. Not later than November 1 of each year, the board shall certify to the county tax assessor-collector of each county situated in whole or in part within the authority's boundaries the rate of tax prescribed for each class of motor vehicles for the ensuing tax year. At the time the owner of a motor vehicle applies each year to the State Highway Department through the county tax assessor-collector of the county in which he resides for the regulation of each such vehicle owned or controlled by him for the ensuing or current motor vehicle registration year or unexpired portion thereof, such owner shall pay to the county tax assessor-collector the motor vehicle emission taxes due or to become due to such authority on such motor vehicle for the ensuing or current tax year at the applicable rate prescribed by the board. The county tax assessor-collector shall refuse to issue a registration license for a motor vehicle until the emission tax thereon for the period covered by such registration license has been paid.

"(b) The tax year for motor vehicle emission taxes shall consist of calendar quarters, the first quarter to commence on April 1 of each year. Each application so filed during the second quarter, the third quarter, or the fourth quarter shall be accompanied by three-fourths, one-half, or one-quarter, respectively, of the annual tax; and each application for reregistration filed subsequent to June 30th shall be accompanied by an affidavit that such vehicle has not been previously operated within the boundaries of the authority during any quarter of the current tax year, failing which the tax for the entire tax year shall be paid in full.

"(c) The authority shall furnish to the tax assessor-collector of each county situated in whole or in part

within the boundaries of the authority, motor vehicle emission tax receipts in triplicate each of which shall, when issued, bear a number or other identifying symbol of the motor vehicle for which issued. The tax assessor-collector shall retain one copy and deliver the original to the taxpayer.

"(d) Each tax assessor-collector shall receive a uniform fee of 45 cents for each tax receipt issued by him each tax year pursuant to this Act. Such fees shall be used to pay expenses reasonably incurred in collecting such taxes and issuing all tax receipts pursuant hereto.

"(e) Each tax assessor-collector shall remit to the authority on or before the 15th day of each month, or at such other intervals of time as may be agreed upon by the authority and each tax assessor-collector, all taxes, penalties and interest collected on behalf of the authority for the preceding calendar month, or other agreed time interval, after deducting the colection fees and mailing charges described in the next preceding paragraph.

[Motor Vehicle Emission Tax—Rate of Tax, Exempt Vehicles and Payments and Penalties are omitted]

* * *

General Powers of Taxation

"Sec. 11A. (a) In addition to or in lieu of the motor vehicle emission taxes provided for in this Act, the board of an authority may levy and collect any kind of tax, other than an ad valorem tax on property, which is not prohibited by the Texas Constitution.

"(b) No tax of any kind may be levied and collected by the board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of an authority voting at an election held by the board for that purpose. A separate proposition must be submitted for each kind of tax proposed, and propositions may be submitted in the alternative with provision for the method of determining the results of the election. Each proposition must include a brief statement of the nature of the proposed tax. The notice of the election must include a statement or description of the basis of or rate at which the tax is proposed to be levied. Any subsequent increase in a tax must also be approved at an election.

"(c) Prior to an election to authorize a tax other than motor vehicle emission taxes or a sales and use tax, the board shall adopt a complete tax code and rules and regulations providing for the nature and amount of any tax with provisions for complete administration and enforcement, including the time and manner of payment, exemptions, liens, interest, penalties, discounts for advance payment, refunds for erroneous payment, fees for collection, collection procedures, manner of enforcement, required returns, registration and reports of taxpayers, the duties and responsibilities of tax officers and taxpayers, the delegation to tax officers to make additional rules and regulations and determinations and to obtain records as may be appropriate, and every other provision which may be determined to be desirable, including incorporation of any tax laws and remedies for the administration and enforcement that are available to the state or any political entities under general law.

"(d) A tax code and rules and regulations may be amended by the board from time to time after an election approving a tax, but no amendment may increase the amount of a tax unless the increase is approved at an election.

"Sec. 11B. (A) Subject to approval at a tax election in accordance with this Act, the board of an authority shall be authorized to levy, collect and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent on receipts from the sale at retail of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted and as heretofore or hereafter amended. The provisions of this section shall be applicable to the levy, imposition and collection of such tax.

"(B)(a) The following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

"(1) 'Authority area' means the geographical limits of the authority.

"(2) 'Comptroller' means the Comptroller of Public Accounts of Texas.

"(3) 'Local Sales and Use Tax' means any sales and use tax imposed by a city within the authority area under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

"(b) Every retailer within the authority area shall add the tax imposed by the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax and

the tax imposed under the authority of this Act to his sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined taxes on the transaction shall be determined by multiplying the amount of the sale by the total of the combined applicable tax rates. Any fraction of one cent which is less than one-half of one cent of tax shall not be collected. Any fraction of one cent of tax equal to one-half of one cent or more shall be collected by the retailer as a whole cent of tax. Provided, however, that any retailer who can establish to the satisfaction of the comptroller that 50 percent or more of his receipts from the sale of taxable items arise from individual transactions where the total sales price when multiplied by the combined rates of the taxes imposed under the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax, and this section equals an amount that is less than one-half of one cent may exclude the receipts from such sales when reporting and paying the tax imposed under this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax. No retailer shall avail himself of this provision without prior written approval of the comptroller. The comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the comptroller shall be deemed to be a failure and refusal

to pay the taxes imposed by this Act, the Limited Sales, Excise and Use Tax Act and any applicable Local Sales and Use Tax, and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax.

"(c)(1) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use or other consumption within such authority area of taxable items purschased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use or other consumption in such authority area at the same rate as the sales tax levied under this Act of the sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price; provided, that if no excise tax on the storage, use or other consumption of any taxable item is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act, then the tax imposed by this section shall not be owed to and shall not be collected by, for or in behalf of such authority for storage or other consumption of such taxable item within such authority area.

"(2) In each authority where the tax authorized by this Act has been imposed as provided in this Act, the excise tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable excise tax under the Local Sales and Use Tax Act on the storage, use or other consumption of taxable items and the excise tax imposed by this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the ap-

plicable taxes. The tax imposed by this section shall be collected by the comptroller on behalf of and for the benefit of such authority. The formula prescribed in paragraph (b) of this subsection shall be applicable to the collection of the excise tax imposed under this section.

"(3) The provisions of Article 20.031, Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this paragraph (c), provided that the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words 'this state' are used to designate the taxing authority or to delimit the tax imposed; and provided further that the effective date for commencing the collection of the sales tax portion of the tax imposed by this Act in any authority area shall be substituted for the phrase 'the effective date of this chapter.'

[Procedure for Collection of Sales and Use Tax is Omitted]

* * *

Management

"Sec. 12. The responsibility for the management, operation and control of the properties belonging to an authority shall be vested in its board. The board may:

"(a) employ all persons, firms, partnerships or corporations deemed necessary by the board for the conduct of the affairs of the authority, including, but not limited to, a general manager, bookkeepers, auditors, engineers,

attorneys, financial advisers and operating or management companies, and prescribe the duties, tenure and compensation of each. All employees may be removed by the board;

"(b) become a subscriber under the Texas Workmen's Compensation Act with any old-line legal-reserve insurance company authorized to write policies in the State of Texas;

"(c) adopt a seal for the authority;

"(d) invest funds of the authority in direct or indirect obligations of the United States, the state, or any county, city, school district or other political subdivision of the state; funds of the authority may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas; the board, by resolution, may provide that an authorized representative of the authority may invest and reinvest the funds of the authority and provide for money to be withdrawn from the appropriate accounts of the authority for the investments on such terms as the board considers advisable;

"(e) fix the fiscal year for the authority;

"(f) establish a complete system of accounts for the authority and each year shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants which shall be open to public inspection; and

"(g) designate one or more banks to serve as the depository for the funds of the authority.

"All funds of the authority shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the authority's bonds or notes.

"To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties of the State of Texas.

"The board, by resolution, may authorize a designated representative to supervise the substitution of securities pledged to secure the authority's funds.

Rules and Regulations

"Sec. 13. The board may adopt and enforce reasonable rules and regulations:

"(a) to secure and maintain safety and efficiency in the operation and maintenance of its facilities;

"(b) governing the use of the authority's facilities and services by the public and the payment of fares, tolls and charges;

"(c) regulating privileges on any land, easement, right-of-way, rolling stock or other property owned or controlled by the authority; and

"(d) regulating the collection and payment of emission taxes levied by the board.

"A condensed substantive statement of the rules and regulations and the penalty for their violation shall be published after adoption once a week for two consecutive weeks in a newspaper with general circulation in the area

in which the authority is located, which notice shall advise that breach of the rules and regulations will subject the violator to a penalty and that the full text of the rules and regulations is on file in the principal office of the authority where it may be read by any interested person. Such rules and regulations shall become effective 10 days after the second publication.

"The board may set reasonable penalties for the breach of any rule or regulation of the authority which shall not exceed fines of more than $200 or imprisonment for more than 30 days or both. Such penalties shall be in addition to any other penalties provided by the laws of the state and may be enforced by complaint filed in the appropriate court of jurisdiction in the county in which the authority's principal office is located.

"An authority may employ its own peace officers with power to make arrests when necessary to prevent or abate the commission of an offense against the rules and regulations of the authority and against the laws of the state when the offense or threatened offenses occurs on any land, easement, right-of-way, rolling stock or other property owned and controlled by the authority and to make arrests in cases of an offense involving injury or detriment to any property owned or controlled by the authority.

[Competitive Bids Provision Omitted]

* * *

Exemption of Bicounty Metropolitan Areas

"Sec. 15. It is specifically provided that there shall not be included within the metropolitan area, as herein

defined, any part of the territory situated within a bicounty metropolitan area. For the purpose of this exclusion, a 'bicounty metropolitan area' is defined as an area comprised of two contiguous counties in each of which is located a city having a population of 350,000 or more according to the last preceding or any future federal census.

[County Authority to Contract With Authority Omitted]

* * *

Elections

"Sec. 15B. (a) This section governs all elections ordered by the board except elections held under the provisions of Section 5 of this Act.

"(b) Notice of an election ordered by the board shall be given by publication once a week for three consecutive weeks with the first publication in a newspaper with general circulation in the authority at least 21 days before the election.

"(c) A resolution calling an election and the notice of the election are sufficient if the date and hours of the election, the voting places within voting precincts for the election, and the propositions to be voted on are specified. The board may define and declare voting precincts, determine the manner of absentee voting, and prescribe the election officers.

"(d) As soon as practicable after an election, the board shall canvass the returns of the election and declare the results.

"(e) Where not otherwise provided in this section, the general election laws apply.

Right to Enter Land

"Sec. 16. Engineers, employees, and representatives of an authority may go on any land within the authority boundaries to make surveys and examine the land with reference to the location of works, improvements, plants, facilities, equipment or appliances and to attend to any business of the authority; provided that two weeks' notice be given to the owners in possession and that if any of the authority's activities cause damage to the land or property, the land or property shall be restored as nearly as possible to the original state at the sole expense of the authority.

Exemptions from Taxes

"Sec. 17. The property, revenues and income of the authority and the interest on bonds and notes issued by the authority shall be exempt from all taxes levied or to be levied by the State of Texas, its political subdivisions, counties or municipal corporations.

Eligibility of Excepted Areas for Federal Funds

"Sec. 17A. Ratification by referendum of a regional authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the National Mass Transportation Assistance Act of 1974, or any subsequent federal statutes."

* * *

Texas Laws 1973, ch. 141, p. 302
Article 1118x Vernon's Texas Civil Statutes

Findings

Section 1. The legislature finds that:

(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

(b) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizens and the economic life of the areas;

(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the

quality of the ambient air therein and reducing vehicular traffic congestion; and

(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any person the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

Definitions

Sec. 2. The following words and terms, wherever used and referred to in this Act, have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Metropolitan area" means any area within the State of Texas having a population density of not less than 250 persons per square mile and containing not less than 51 percent of the incorporated territory comprising a city having a population of not less than 1,200,000 inhabitants according to the last preceding or any future federal census, and in which there may be situated other incorporated cities, towns and villages and the suburban areas and environs thereof.

(b) "Principal city" means the city of largest population in a metropolitan area.

(c) "Authority" means a rapid transit authority created pursuant to the provisions of this Act.

(d) "Board" means the governing body of an authority.

(e) "Mass transit" means transportation of passengers and hand carried packages and/or baggage of said passengers by means of motorbus, trolley coach, street rail-

way, rail, suspended overhead rail, elevated railways, subways, or any other surface, overhead or underground transportation (except taxicabs), or by any combination of the foregoing.

(f) "System" means all real and personal property of every kind and nature whatsoever, owned or held at any time by an authority for mass transit purposes, including (without limiting the generality of the foregoing), land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars, and buses), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all such facilities.

(g) "Motor vehicle" means a vehicle self-propelled on two or more wheels by an internal combustion engine or motor over roadways other than fixed rails and tracks.

Creation of Rapid Transit Authority

Sec. 3. The governing body of a principal city in a metropolitan area may, on its own motion, and shall, upon being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the following manner:

(a) Such governing body shall by ordinance or resolution fix a time and place for holding a public hearing on the proposal to create such an authority, which ordinance or resolution shall define the boundaries of the area pro-

posed to be included in such authority. If it is proposed to make the boundaries of the authority coterminous with the boundaries of the county in which the principal city is located, such resolution or ordinance shall so state and it shall not be necessary otherwise to describe the territory proposed to be included.

(b) Notice of the time and place of such public hearing, including a description of the area proposed to be included in such authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in such metropolitan area, the first publication to be not less than 15 days prior to the date fixed for such hearing.

(c) The governing body of the principal city shall conduct said hearing at the time and place specified in such notice, and may continue such hearing from day to day and from time to time until completed. Any interested person may appear and offer evidence for or against the creation of the proposed authority, and may present evidence as to whether or not the creation of such proposed authority and the construction and operation of a mass transit system in such metropolitan area (1) would be of benefit to persons and property situated within the boundaries of the proposed authority, (2) would be of public utility, and (3) would be in the public interest, as well as any other facts bearing upon the creation of such an authority and the construction and operation of such system.

(d) If, after hearing the evidence adduced at such hearing, the governing body of the principal city finds that the creation of such an authority, and the construction and operation of such a system, would be of benefit

to persons and property situated within the boundaries of the proposed authority, would be of public utility, and would be in the public interest, such governing body shall adopt an ordinance creating such authority and prescribing the boundaries thereof. Such boundaries may include all or any part of the area described in such notice but shall not contain additional territory without further notice and hearing in the manner herein provided. The authority shall bear the name of the principal city and shall be known as "_____ Rapid Transit Authority," and when so created and confirmed at an election held for that purpose, shall have and may exercise the powers authorized by this Act.

(e) After such hearing by the governing body of such authority, the said authority shall submit the proposed plan to the governor's inter-agency transportation council for their review and comment.

Transit Authority Board

Sec. 4. The management, control and operation of an authority and its properties shall be vested in a board composed of nine members, five of whom shall be appointed by the governing body of the principal city, two of whom shall be appointed by the commissioners court of the county with the largest population of all counties situated in whole or in part within the boundaries of the authority, and two of whom shall be appointed by the mayors of all incorporated cities, towns and villages (except the principal city) situated in whole or in part within the boundaries of the authority. Three of the members appointed by the governing body of the principal city, one of the members appointed by the commissioners court,

and one of the members appointed by the incorporated cities, towns and villages (except the principal city) shall serve for an original term of one year and all other members shall serve for an original term of two years. Thereafter, all members shall serve for a term of two years.

The mayor of the city of largest population (other than the principal city) within the authority shall serve as chairman of an appointment board composed of all mayors of cities, towns and villages situated wholly or partially within the authority (excluding the principal city) and shall, by notice in writing to all members, call such meetings of the appointment board as may be deemed necessary to appoint a member to the board. Initial appointments shall be made within 60 days after the creation of an authority. Failure to make such appointments shall not impair the authority of the board to organize and conduct its business so long as a majority has been appointed and qualified. All vacancies on the board, whether by death, resignation or termination of the term of office, shall be filled for the remainder of the term in the manner provided for the original appointment of the member whose office becomes vacant.

Each member of the board shall be entitled to the sum of $50 for each meeting of the board which he attends, not to exceed five meetings in any calendar month; and shall be reimbursed for his necessary and reasonable expenses incurred in the discharge of his duties.

The members of the board, who shall be resident citizens and qualified voters of the authority, shall elect from among their number a chairman, a vice-chairman and a secretary. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it

deems necessary. The secretary and assistant secretaries shall, in addition to keeping the permanent records of all proceedings and transactions of the authority, perform such other duties as may be assigned to them by the board. No member of the board or officer of the authority shall be pecuniarily interested and/or benefited, directly or indirectly, in any contract or agreement to which the authority is a party.

Any member of the board may be removed from office by a majority vote of the remaining members of the board for inefficiency, neglect of duty or malfeasance in office; provided, however, that the board shall furnish to such member a statement in writing of the nature of the charges as grounds for such removal which shall become final unless the member, within 10 days, requests a hearing before the board and opportunity to be heard in person or through counsel. After any such hearing, if the board by a majority vote finds that the charges are true, then its decision shall be final.

The board shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman or the general manager may call special meetings as may be necessary. The board, when organized, shall by resolution spread upon the minutes, set the time, place and day of the regular meetings, and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings. Five members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and action may be taken by the authority upon a vote of a majority of the board members present unless the bylaws require a larger number for a particular action.

Sec. 5. Confirmation and Emission Tax Election. After the original board is organized, it shall call an election at which the following proposition shall be submitted to the qualified voters within the authority:

"Shall the creation of the _____ Rapid Transit Authority be confirmed and shall the board of such authority be authorized to levy and collect motor vehicle emission taxes?"

Notice of such election shall state the day and place or places for holding the election, the maximum vehicle emission taxes, by category, that may be authorized, and the proposition to be voted on and shall be published once a week for two consecutive weeks in a newspaper of general circulation within the authority. The first publication shall be at least 15 days before the date set for the election. The election shall be conducted in accordance with the provisions of the Texas Election Code, as amended.

Immediately after such election, the presiding judge of each election precinct shall return the results to the board, which shall canvass the returns and declare the results at the earliest practicable time. If a majority of the votes cast at the election is in favor of confirmation of the creation of the authority and the levy and collection of motor vehicle emission taxes, then the board shall enter the results on its minutes and adopt an order declaring that the authority is created and that the board is authorized to levy and collect motor vehicle emission taxes, which order shall contain a description of the boundaries of the authority, and a certified copy of which shall be filed with the Texas Mass Transportation Com-

mission and in the deed records of the county or counties in which the authority is located.

If a majority of the votes cast at the election is against confirmation of the creation of the authority and the levy and collection of motor vehicle emission taxes, the board shall enter the results on its minutes and adopt an order declaring that the confirmation of the creation of the authority was defeated, and file a certified copy of such order with the Texas Mass Transportation Commission, whereupon the authority shall be dissolved.

Such election may be held separately or in conjunction with other elections, and the cost thereof shall be paid by the principal city.

[Remainder of original Act is Omitted]

* * *

Texas Laws 1979, ch. 683, p. 1610
Article 1118y Vernon's Texas Civil Statutes

Findings

Section 1. The legislature finds that:

(1) An increasing proportion of the state's population is located in its rapidly expanding metropolitan areas;

(2) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles that emit pollutants into the air and consume great quantities of limited energy resources;

(3) Such concentration of motor vehicles places an undue burden on existing streets, freeways, and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizenry; and

(4) Mobility for all citizens, which must include alternatives to the private passenger motor vehicle, is essential to the continued growth and maintenance of economic vitality of these metropolitan areas.

Definitions

Sec. 2. In this Act, unless the context requires otherwise:

(1) "Authority" means a regional transportation authority created pursuant to this Act.

(2) "County of a principal city" means a county in which the majority of the territory of a principal city is situated.

(3) "Creating entities" means the principal city and/or county of the principal city or any contiguous city as provided in Section 24.

(4) "Executive committee" means the directors of the authority who serve as the governing body of the authority.

(5) "General transportation services" means services that complement the public transportation system, including but not limited to parking garages, special transportation services for the elderly and the handicapped, medical transportation services, assistance in street modifications as necessary to accommodate the public transportation system, and construction of new general aviation facilities or renovation or purchase of existing facilities not served by certificated air carriers in order to relieve air traffic congestion at existing facilities.

(6) "Interim executive committee" means the executive committee selected before the confirmation election for the purpose of guiding the establishment of a permanent authority and creating a service plan.

(7) "Interim subregional board(s)" means the subregional board(s) organized to serve before the holding of the confirmation election.

(8) "Metropolitan area" means a federal standard metropolitan statistical area having a population of more than 500,000, not more than 60 percent of which reside in cities of more than 300,000.

(9) "Population" means the population of a city or area as the context may require, according to the last preceding federal census or if there has been no federal census within the preceding five years, then according to

the latest population estimates of the appropriate metropolitan planning organization.

(10) "Principal city" means a city having a population of at least 300,000.

(11) "Public transportation" means the conveyance of passengers and hand-carried packages or baggage of passengers by means of any mode of transportation other than a privately owned vehicle.

(12) "Public transportation system" means all real and personal property owned or held by an authority for public transportation or general transportation service purposes, including but not limited to land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, mass transportation facilities, rapid transit facilities, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to public transportation), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all the facilities.

(13) "Service plan" means an outline of the service that would be provided by the authority to those units of election confirming the authority in an election.

(14) "Subregion" means a principal city, the county of the principal city, and any city or unit of election included within the boundaries of a subregion by the creating entity of that subregion and which is confirmed at an election.

(15) "Subregional board" means the board created to represent a subregion pursuant to Sections 6 and 7 of this Act.

(16) "Unit of election" means any one of the following:

(A) a principal city

(B) a designated unincorporated area created by the commissioners court of a county of a principal city;

(C) any other incorporated city located within the territory of an authority.

Creation of a Regional Transportation Authority

Sec. 3. A regional transportation authority to provide public transportation and general transportation services may be created in a metropolitan area. The process for creating an authority must be initiated by one of the following methods:

(1) The governing body of a principal city and/or county of the principal city from each subregion may agree to initiate the process to create an authority on their own motions. The principal city and/or the county of the principal city in each subregion may become the creating entity. If the creating entity in one subregion initiates the process and a creating entity in the other subregion does not initiate the process within 60 days, the first subregion may proceed on its own.

(2) If a petition requesting creation of an authority signed by at least five percent of the registered voters of the creating entity is presented, the creating entity or entities receiving the petitions shall initiate the process for creating the authority. If the creating entity in one

subregion initiates the process and a creating entity in the other subregion does not initiate the process within 60 days, the first subregion may proceed on its own. The entity to which a petition is presented has the primary responsibility for initiating the authority within a subregion. The principal city and county of the principal city of either subregion, however, may by mutual agreement share the responsibility or shift it to the other entity.

Initiating Procedure

Sec. 4. (a) The process shall be initiated by a resolution or order of each creating entity containing the following provisions:

(1) a description of the boundaries of the territory proposed to be included in the subregion(s) of the authority;

(2) designation of the time(s) and place(s) agreed upon by the creating entity or entities for holding public hearings on the proposal to create the authority;

(3) authorization for establishment of the interim subregional boards and interim executive committee.

(b) The boundaries of the proposed authority shall include all territory in the county or counties of the principal city or cities and any additional territory in adjacent counties having more than 52,000 population that is included in the resolution(s) or order(s). A unit of election that has the majority of its population in a county of a principal city shall be included in the subregion of that principal city for the purposes of the initiating procedure.

(c) Notice of the time and place of the public hearings, including a description of the area proposed to be included in the authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in each of the county or counties of the principal city or cities, the first publication to be not less than 30 days prior to the date fixed for the hearing. The creating entities shall submit to the State Highways and Public Transportation Commission and the comptroller of public accounts a copy of this notice.

(d) The creating entity or entities and the interim executive committee shall conduct the hearings at the time and place specified in the notice and may continue the hearings from day to day and from time to time until completed. Any interested person may appear and offer evidence concerning the boundaries and creation of the authority, operation of a regional transportation system, and whether creation of an authority would be of public utility and in the public interest as well as any other facts bearing upon the creation of an authority.

(e) After hearing the evidence presented at the hearings, the creating entity or entities shall each adopt the resolution or order designating the name of the authority, prescribing the territory to be included in the authority, and declaring that the actual territory included in the authority is subject to the results of the confirmation election. If one creating entity fails to adopt this resolution or order within 60 days of the action of the other creating entity, the first creating entity may proceed on its own.

(f) After the hearing, the results of the hearing and the boundaries set by the creating entities shall be sub-

mitted to the State Highways and Public Transportation Commission and the comptroller of public accounts.

Regional Transportation Authority Executive Committee

Sec. 5. (a) The control and operation of a regional transportation authority and its property shall be vested in an executive committee comprised of 11 members selected as follows:

(1) seven members from the membership of the subregional board in the subregion containing a principal city having a population greater than 800,000; and

(2) four members from the membership of the subregional board in the subregion containing a principal city having a population of less than 800,000.

(b) Before the confirmation election, the subregional boards shall select their representatives to the executive committee from their membership by a vote of the members. After the confirmation election, the subregional boards shall select their representatives in the same manner and those representatives shall serve at the pleasure of the subregional boards with the confirmation of the appointments made each September 1. To remain on the executive committee a person must maintain membership on a subregional board. A vacancy on the executive committee shall be filled in the same manner as original appointments.

(c) Following the confirmation election each member of the subregional boards shall be entitled to the sum of $50 for each meeting of the executive committee or subregional board attended and shall be reimbursed for necessary and reasonable expenses incurred in the discharge of duties.

(d) The members of the executive committee shall elect from among their number a chairman, vice-chairman, and a secretary. The executive committee may appoint such assistant secretaries, either members or nonmembers of the executive committee, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the authority perform such other duties as may be assigned to them by the executive committee. No member of the executive committee or officer of the authority shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(e) The executive committee shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman may call special meetings as may be necessary. The executive committee when organized shall by resolution set the time, place, and day of the regular meetings and shall adopt rules, regulations, and bylaws as it may deem necessary for the conduct of its official meetings. Eight members shall constitute a quorum of the executive committee for the purpose of conducting its business and exercising its powers, and action may be taken by the authority upon a vote of a majority of the executive committee members present unless the by-laws require a larger number for a particular action.

(f) The executive committee shall receive recommendations for the annual budget from each of the subregional boards and shall obtain approval from each subregional

board of the final annual budget as it pertains to that board's subregion.

Subregional Board in a Subregion Having a Principal City With Population in Excess of 800,000

Sec. 6. (a) The subregional board in a subregion having a principal city with population in excess of 800,000 shall be organized in accordance with this section.

(b) The commissioners court of the county of the principal city shall appoint one member. The member shall represent only the communities and unincorporated areas in the county not directly represented on the board and shall reside in such an area.

(c) The remaining members of the subregional board shall be apportioned according to the ratio which the population of each incorporated city bears to the total population of the territory included within the subregion. Any combination of cities aggregating a total population of 60,000 shall be entitled to one member on the interim subregional board. Following the confirmation election, any combination of cities who have voted confirmation of the authority may aggregate a population of at least 60,000 for the purpose of appointing one member to the initial subregional board. In establishing the interim subregional board, if the results of the 1980 federal census are unavailable, the most recent population estimates of the appropriate metropolitan planning organization will be used.

(d) No city will be entitled to appoint more than 65 percent of the board members. If it would be so entitled pursuant to Subsection (c) of this section, it will be

limited to 65 percent and the remaining members will be apportioned among the other cities in the subregion according to the provisions of Subsection (c) of this section.

(e) Prior to 60 days following the date for establishment of the board or restructuring of the board pursuant to Subsection (f) of this section, any two or more cities lacking a specifically designated board member may combine to be treated as a single city for purposes of Subsection (c) of this section, but no combination will be entitled to appoint more than one member of the board.

(f) Every five years as of the first day of September following the date the census data or population estimates become available, the board shall be restructured pursuant to Subsections (c) and (h) of this section, if warranted by population changes or changes in combinations established pursuant to Subsection (e) of this section.

(g) The members of the board shall serve at the pleasure of the governing body of each appointing governmental entity. The governing body shall confirm its board appointment to begin terms on the first day of September each year.

(h) The total number of members comprising the board shall be governed by the total population of the territory included in the subregion. Specifically, the board size shall be determined by the following formula:

Total Population in Subregion	Total Members on Subregional Board
Less than 1,000,000	15
1,000,000 to 1,400,000	21
1,400,000 plus	25

(i) Should a city be entitled to more than one board member, the governing body may appoint a number of members less than those allocated, who will be entitled to the same number of votes as the number of members allocated, but a member so appointed shall not cast divided votes.

(j) Sixty-five percent of the members constitutes a quorum for the purpose of conducting business and actions may be taken upon a majority vote of the members present so long as there is a quorum.

Subregional Board in a Subregion Having a Principal City with Population Less than 800,000

Sec. 7. (a) The subregional board in a subregion having a principal city with population less than 800,000 shall be organized in accordance with this section.

(b) The interim subregional board shall be comprised of nine members appointed as follows:

(1) four members appointed by the governing body of the principal city;

(2) four members appointed by the commissioners court of the county of the principal city; and

(3) one member appointed by the governing body of a city having a population in excess of 100,000.

(c) The permanent subregional board shall be comprised of nine members appointed as follows:

(1) If the entire county of the principal city is confirmed as all or part of the authority, the permanent subregional board shall be appointed in the same manner as the interim subregional board.

(2) If less than the entire county of the principal city is confirmed as all or part of the authority the permanent subregional board shall be appointed as follows:

(A) The commissioners court of the county of the principal city shall appoint at least one member to represent the unincorporated areas and incorporated cities of the county which are not otherwise represented on the subregional board.

(B) The remaining members shall be apportioned to the incorporated cities confirmed as all or part of the subregion according to the ratio which the population of each unit of election bears to the total population of the area confirmed as the subregion. Units of election which fail to receive at least one member shall be aggregated with the county to determine population represented by the county, and appropriate additional members, if any, shall be so apportioned to the county. Units of election which are entitled to one or more members shall have the number of members rounded to the nearest whole number to determine actual apportionment.

(d) Six members of the subregional board shall constitute a quorum of the board for the purpose of conducting business and action may be taken by a majority vote of the members present so long as there is a quorum.

Membership, Terms, Meetings, and Responsibilities of Subregional Boards

Sec. 8. (a) Members of subregional boards must be registered voters residing within the boundaries of the authority. They shall serve at the pleasure of the appointing local governing bodies. Reaffirmation of the appoint-

ments will be required each September 1. Vacancies shall be filled in the same manner as original appointments.

(b) A subregional board shall elect from among its membership a chairman, vice-chairman, and secretary. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the board perform such other duties as may be assigned to them by the board. No member of a subregional board shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(c) A subregional board when organized shall by resolution set the time, place, and day of the regular meetings and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings and special meetings called by written notice of the chairman or vice-chairman.

(d) The subregional board shall:

(1) develop, recommend, and approve the annual budget for the appropriate subregion and shall make recommendations for the overall budget; and

(2) make recommendations to the executive committee for operation of services provided by the authority.

Confirmation Election

Sec. 9. (a) After the interim executive committee has organized, developed a service plan, and determined the rate of tax that it desires to levy, it shall call a con-

firmation election in accordance with the provisions of this section.

(b) Before ordering an election, the executive committee shall notify the commissioners court of each county included in whole or part within the initial territory of the authority of its intention to do so. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated units of election in the unincorporated portion of the appropriate county. Each designated unit of election shall have outer boundaries, to the extent practicable, that coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas. The total area of all designated election areas shall include all of the unincorporated area within the initial territory of the authority.

(c) When the executive committee orders a confirmation election, it shall submit to the qualified voters within the authority the following proposition:

"Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?"

(d) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held pursuant to this Act shall be furnished to the State Highways and Public Transportation Commission and the comptroller of public accounts.

(e) The election shall be conducted so that votes are separately tabulated and canvassed in each unit of election within the authority.

(f) Immediately after the election, the presiding judge of each election precinct shall return the results to the executive committee, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue to exist; except that unless the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in that subregion. If the votes cast are such that the authority will continue to exist in either or both subregions, the executive committee shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. All units of election approving the authority and proposed tax shall be included in the authority if their subregion is included, unless the executive committee of the authority notifies the appropriate governing body in writing that it is excepted from the authority and proposed tax because it is not contiguous to the existing authority and would create a fiscal hardship on the authority. A certified copy of the order adopted by the executive committee shall be filed with the State Highways and Public Transportation Commission and the comptroller of public accounts. The order shall reflect the date of the election, the proposition voted on, the total number of votes cast for and against the proposition in each unit of election, and the number of votes by which the proposition was approved

in each election unit and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(g) If the votes cast are such that the authority ceases to exist in its entirety, the executive committee shall enter an order so declaring and file a certified copy of the order with the State Highways and Public Transportation Commission and the comptroller of public accounts, and the authority shall be dissolved.

(h) The cost of the confirmation election shall be paid by the creating entity or entities.

(i) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the executive committee may levy and collect the proposed tax within those limits. In no event shall the tax authorized under this Act be levied in any unit of election which has failed to confirm the authority.

(j) If the continued existence of an authority is not confirmed by election within three years after the effective date of the resolution(s) or order(s) initiating the process to create the authority, the authority ceases to exist on the expiration of the three years.

(k) For a period of one year following a confirmation election, the governing body of any unit of election may on its own volition or shall upon receipt of a petition containing signatures of at least 20 percent of the registered voters within that unit of election call an election and offer the following proposition: "Shall the (name of authority) be dissolved in (unit of election)?" Should

the majority of voters voting in the election vote to dissolve the authority within the unit of election, the authority shall cease to exist within the unit of election as of 12:00 midnight on the date of the canvass of the election and all financial obligations of that unit of election will cease to accrue at that time. The financial obligation shall be computed on a per capita basis for the entire year and taxes will continue to be collected until such time as all financial obligations of the unit of election are paid, at which time the taxes collected to support the authority shall cease within that unit of election.

(*l*) Should the governing body within a unit of election call an election on its own volition or upon petition as provided in Subsection (k) of this section for the purpose of dissolving the authority within the unit of election more than 12 months after the confirmation election, at least 12 months' notice of intent to hold the election must be provided to the executive committee, the State Department of Highways and Public Transportation and the comptroller of public accounts.

[Remainder of Act Omitted]

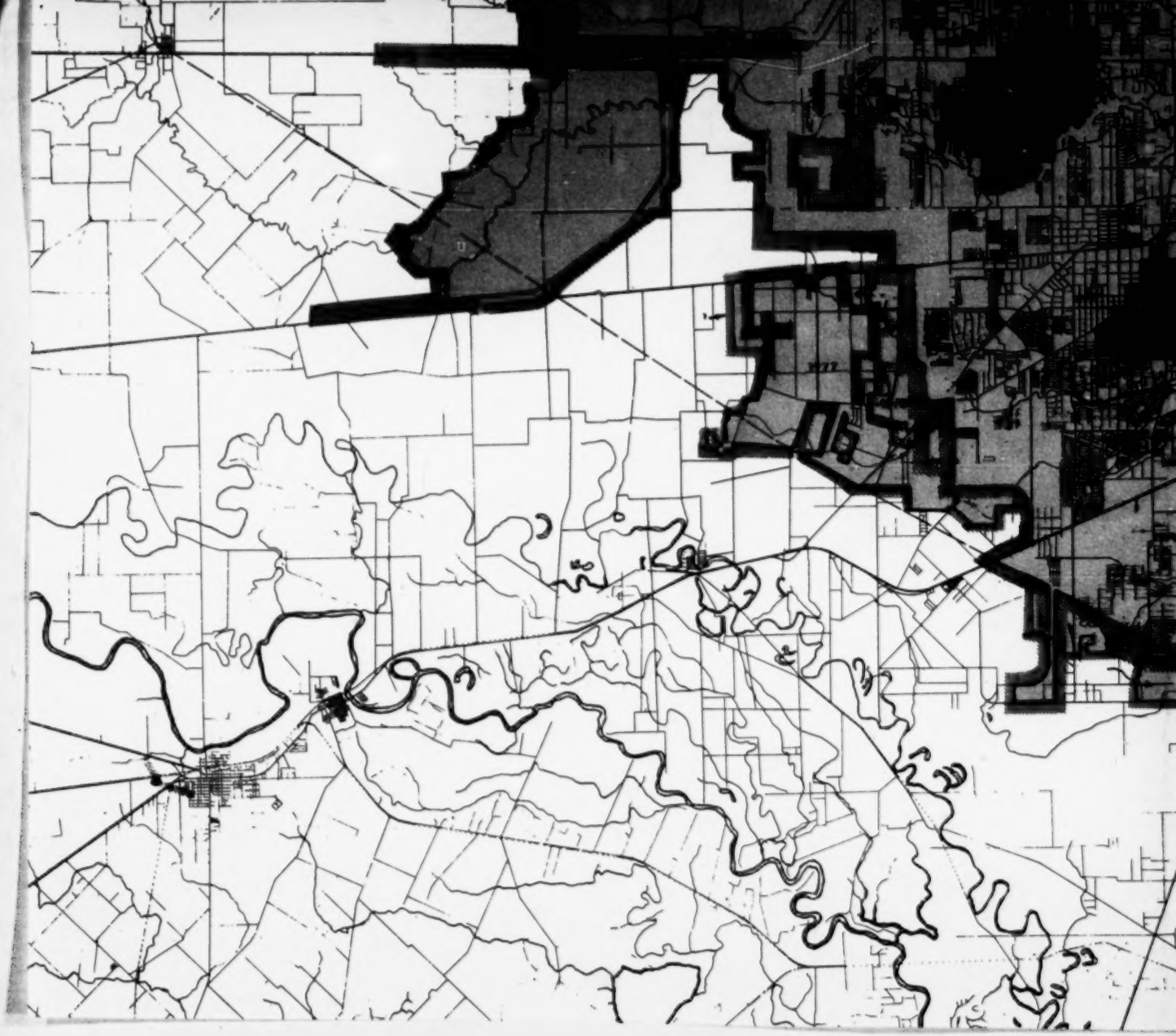
* * *

MAP LEGEND

The various areas in the following three maps are depicted by the following colors:

White	Unincorporated Areas and cities outside of Houston's outer boundary
Red	City of Houston, all purposes
Purple	City of Houston, navigation and wharfage purposes
Green	City of Humble
Blue	Cities of Bellaire, West University Place, Southside Place, Bunker Hill, Hedwig Village, Hunters Creek, Piney Point, Hilshire and Spring Valley
Orange	Cities of Jacinto City and Galena Park

92a



93a
1965

94a
JACINTO CITY
GALENA PARK
PASADENA
J. H. MAGEE
A-1571
C. MARTINEZ
A-545
GREENS BAYOU PARK
J. CALLAHAN
A-192
INDUSTRIAL
W. LATHAM
A-507
MANOR PLACE
J. GORDON
A-996
WOODLAND ACRES ANNEX
WOODLAND ACRES
W. P. HARRIS
R. WILSON
A-31
EZEKIEL THOMAS
A-73
GALENA ACRES
WOODLAND
UNIVERSAL CITY
MANCHESTER
WILLIAM VINCE SURVEY
A-78
ALLENDALE TOWNSITE
TEXACO INC.

Office - Supreme Court, U.S
FILED
JUL 27 1983
ALEXANDER L. STEVAS
CLERK

No. 82-2124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WILSON ARCHER, ET AL.,

Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, ET AL.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

MOTION TO DISMISS

JONATHAN DAY
North Tower, Pennzoil Place
700 Milam, Suite 900
Houston, Texas 77002
(713) 225-7000

Counsel for Appellee
Metropolitan Transit Authority

Of Counsel:

MAYOR, DAY & CALDWELL
North Tower, Pennzoil Place
700 Milam, Suite 900
Houston, Texas 77002

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii-iv
STATEMENT OF THE CASE	1
COMPLIANCE WITH THE RULES OF THE SUPREME COURT	2
NO SUBSTANTIAL FEDERAL QUESTIONS ARE PRESENTED	
A. The City of Humble has no Equal Protection Claim	4
B. The "Rational Basis" Test, and Not the "Strict Scrutiny" Test, is the Proper Standard for Judicial Review of the Voting Unit Classifications Established by Article 1118x	5
C. The Classification of Election Units Established by Article 1118x is Reasonable, and Therefore, Does Not Violate the Equal Protection Clause	8
D. Appellants Have Not Demonstrated Any Discrimination Vis-A-Vis Other Areas	9
E. Appellants Asserted Right to an Elected Board of Directors is Without Merit	12
i) The METRO Board is not a legislative body	13
ii) Regardless of the legislative/administrative characterization of the METRO Board, the "one man, one vote" principle does not apply to such a body	15
iii) Assuming the "one man, one vote" principle is inapplicable, there is no constitutional requirement that the METRO Board be elected	19
CONCLUSION	22
APPENDIX	
A. Findings of Fact and Conclusions of Law in the District Court of Travis County, Texas, 53rd Judicial District	A-1
B. Additional and Supplemental Findings of Fact in the District Court of Travis County, Texas, 53rd Judicial District	B-1

TABLE OF AUTHORITIES

Cases

	Page
Associated Enterprises, Inc. v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973)	17
Avery v. *Midland County*, 390 U.S. 474 (1968)	16, 17
Ball v. *James*, 451 U.S. 355 (1981)	17
Benner v. *Oswald*, 592 F.2d 174 (3d Cir. 1979), *cert. denied*, 444 U.S. 832 (1979)	17
Bianchi v. *Griffing*, 393 F.2d 457 (2d Cir. 1968)	17
Byrd v. *City of San Antonio*, 587 F.2d 184 (5th Cir. 1979)	14
Cantwell v. *Hudnut*, 566 F.2d 30 (7th Cir. 1977), *cert. denied*, 439 U.S. 1114 (1979)	7
Cipriano v. *City of Houma*, 395 U.S. 701 (1969)	6, 8
City of Atlanta v. *Metropolitan Atlanta Rapid Transit Authority*, 636 F.2d 1084 (5th Cir. 1981)	14, 15
City of Humble v. *Metropolitan Transit Authority*, 636 S.W.2d 484 (Tex. App. — Austin 1982, writ ref'd n.r.e.)	11, 19
City of Phoenix v. *Kolodziejski*, 399 U.S. 204 (1970)	8
Clark v. *Town of Greenburgh*, 436 F.2d 770 (2d Cir. 1971)	7
Concerned Citizens v. *Pine Creek Conservancy District*, 473 F. Supp. 334 (S.D. Oh. 1977)	20
Creel v. *Freeman*, 531 F.2d 286 (5th Cir. 1976), *cert. denied*, 429 U.S. 1066 (1977)	7
Dandridge v. *Williams*, 397 U.S. 471 (1970)	5
Dunn v. *Blumstein*, 405 U.S. 330 (1972)	7
Evans v. *Cornman*, 398 U.S. 419 (1970)	7
Fortson v. *Morris*, 385 U.S. 231 (1966)	17, 20
Grivetti v. *Illinois State Electoral Board*, 335 F. Supp. 779 (N.D. Ill. 1971)	18
Hadley v. *Junior College District*, 397 U.S. 50 (1970)	7, 16, 17, 18
Hill v. *Stone*, 421 U.S. 289 (1975)	8
Hinton v. *Threet*, 280 F. Supp. 830 (M.D. Tenn. 1968)	18
Holshouser v. *Scott*, 335 F. Supp. 928 (M.D. N.C. 1971)	20

	PAGE
Holt Civic Club v. *City of Tuscaloosa*, 439 U.S. 60 (1978)	5, 17
Hoots v. *Pennsylvania*, 672 F.2d 1124 (3d Cir. 1982)	16
Kramer v. *Union Free School District*, 395 U.S. 621 (1969)	6, 8
Little Thunder v. *South Dakota*, 518 F.2d 1253 (8th Cir. 1975)	17
Locklear v. *North Carolina State Board of Elections*, 514 F.2d 1152 (4th Cir. 1975)	8
Luther v. *Borden*, 48 U.S. (7 How.) 1 (1849)	20
Lynch v. *Illinois State Board of Elections*, 682 F.2d 93 (7th Cir. 1982)	21
Massachusetts Board of Retirement v. *Murgia*, 427 U.S. 307 (1976)	5
McGowan v. *Maryland*, 366 U.S. 420 (1961)	4, 5
New York City Transit Authority v. *Beazer*, 440 U.S. 568 (1979)	5
Oakes v. *Board of Trustees*, 385 F. Supp. 392 (N.D. Miss. 1974)	16
Parham v. *Hughes*, 441 U.S. 347 (1979)	5, 6
People ex rel Younger v. *County of El Dorado*, 487 P.2d 1193 (Cal. 1971)	16
Phillips v. *Beasley*, 78 F.R.D. 207 (N.D. Ala. 1978)	7
Reynolds v. Sims, 377 U.S. 533 (1964)	7, 12, 15
Rodriguez v. *Popular Democratic Party*, 102 S.Ct. 2194 (1982)	13, 19, 20
Rosenthal v. *Board of Education*, 385 F. Supp. 223 (E.D. N.Y. 1974), *aff'd* 420 U.S. 985 (1975)	16
Sailors v. *Board of Education*, 387 U.S. 105 (1967)	12, 13, 16, 17
Salsburg v. *Maryland*, 346 U.S. 545 (1954)	4
Salyer Land Co. v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973)	17
San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973)	4, 6, 20
Stokes v. *Fortson*, 234 F. Supp. 575 (N.D. Ga. 1964)	20
Town of Lockport v. *Citizens For Community Action*, 430 U.S. 259 (1977)	7, 10
Valenti v. *Rockefeller*, 393 U.S. 405 (1969)	21

	Page
Vance v. *Bradley*, 440 U.S. 93 (1979)	6
Wallis v. *Blue*, 263 F. Supp. 965 (N.D. Ga. 1967)	17
Williams v. *Rhodes*, 393 U.S. 23 (1968)	7
Constitutions	
U.S. CONST. art. IV, § 4	20
U.S. CONST. amend. 14	19
TEX. CONST. art. III, §§ 1-3	18
Statutes	
TEX. REV. CIV. STAT. ANN. art. 1118x § 1 (Vernon Supp. 1982)	9
TEX. REV. CIV. STAT. ANN. art. 1118x § 2(b) (Vernon Supp. 1982)	2
TEX. REV. CIV. STAT. ANN. art. 1118x § 5(c) (Vernon Supp. 1982)	8, 10
TEX. REV. CIV. STAT. ANN. art. 1118x § 5(f) (Vernon Supp. 1982)	2, 4, 6, 8, 10
TEX. REV. CIV. STAT. ANN. art. 1118x § 5(g) (Vernon Supp. 1982)	2, 8
TEX. REV. CIV. STAT. ANN. art. 1118x § 6B (Vernon Supp. 1982)	2
TEX. REV. CIV. STAT. ANN. art. 1118x § 11A(b) (Vernon Supp. 1982)	13
TEX. REV. CIV. STAT. ANN. art. 1118x § 13 (Vernon Supp. 1982)	14
TEX. REV. CIV. STAT. ANN. art. 1118x § 15 (Vernon Supp. 1982)	12
TEX. REV. CIV. STAT. ANN. art. 1118x § 18 (Vernon Supp. 1982)	14
TEX. REV. CIV. STAT. ANN. art. 1118y (Vernon Supp. 1982)	11
TEX. REV. CIV. STAT. ANN. arts. 1183-87 (Vernon 1963)	10
Rules of the Supreme Court of the United States	
SUP. CT. R. 15.1(j)(ii)	1, 2, 3
SUP. CT. R. 16.1(a)	1, 3
SUP. CT. R. 16.1(b)	1, 3
Secondary Authority	
Note, *Reapportionment*, 79 HARV. L. REV. 1228 (1966)	20

No. 82-2124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WILSON ARCHER, ET AL.,

Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, ET AL.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR
THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

MOTION TO DISMISS

METROPOLITAN TRANSIT AUTHORITY ("METRO") moves to dismiss the Appeal of Appellants Wilson Archer, et al., pursuant to Sup. Ct. R. 16.1(a) & 16.1(b). As shown below, this appeal has not been taken in conformity with Sup. Ct. R. 15.1(j)(ii) and should be dismissed pursuant to Sup. Ct. R. 16.1(a). Furthermore, this appeal does not present a substantial federal question, and attempts to raise one claim that was not timely or properly asserted below and was not expressly passed on below. Accordingly, this appeal should be dismissed pursuant to Sup. Ct. R. 16.1(b).

STATEMENT OF THE CASE

Appellants have challenged, under the equal protection clause of the fourteenth amendment to the Constitution of the United States, the election which confirmed the creation of METRO and authorized it to levy a 1% sales tax. All resident voters of the City of Houston ("Houston"), the City of Humble ("Humble"), and several other cities within the perimeter of the outer boundaries of Houston voted as a single election unit, as

required by Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982). This unit comprised the principal election unit. The statute requires that a majority of voters in the election unit which includes the principal city approve the creation of a transit authority. *Id.* § 5(g). The principal city in the METRO District is Houston. *Id.* § 2(b).

There was no weighting given to any votes in that unit. Every resident voter had a single vote, regardless of where he resided in the election unit. The individual appellants in this case participated in that election, and their votes were given the same weight as those of other voters in the unit. By a margin of approximately 16,000 votes, the voters in this principal election unit approved the creation of METRO and authorized the levy of a 1% sales tax.

In addition to the principal election unit described above, Article 1118x provided that municipalities outside the perimeter of Houston which participated in the election voted as separate election units. *Id.* § 5(f)(3). Similarly, each of five unincorporated areas in Harris County, Texas, voted as separate units. *Id.* § 5(f)(2). Those units in which a majority of voters approved the creation of METRO were included in the METRO District. *Id.* § 5(g).

The Board of Directors of METRO ("the METRO Board") is appointed by the mayor of Houston, the mayors of other incorporated cities in the district, and by the Commissioners' Court of Harris County. *Id.* § 6B.

COMPLIANCE WITH RULES OF THE SUPREME COURT

The Rules of this Court provide that copies of Findings of Fact and Conclusions of Law rendered by courts in the case shall be submitted as an appendix to the Jurisdictional Statement. Sup. Ct. R. 15.1(j)(ii). Appellants failed to comply with this requirement. The trial court in this case rendered extensive

Findings of Fact and Conclusions of Law, which are provided herein as Appendices A and B.

Rather than submit the findings of the court which heard this case, Appellants have simply alleged in their Jurisdictional Statement numerous facts which are not supported in the record or, in some cases, inconsistent with the findings and record. For example, on page 8 Appellants state that "Houston completely surrounds the cities of Jacinto City and Galena Park." Finding of Fact No. 20 of the trial court states as follows:

> Cities of Jacinto City and Galena Park are not wholly located within the perimeter of the outer boundary of the City of Houston.

Similarly, Appellants have attached several maps to their Jurisdictional Statement which are not in the record. Further, there are discrepancies in the coloring of the maps between the three (3) copies which have been provided to counsel for METRO. The maps in the Jurisdictional Statement submitted to counsel for METRO are neither accurate, in the record, nor supported by the record.

The failure of Appellants to provide the detailed findings of the trial court is a violation of Sup. Ct. R. 15(j)(ii). Appellants' substitution of outside-the-record statements and maps in lieu of Findings of Fact and Conclusions of Law of the trial court justify dismissal under Sup. Ct. R. 16.1(a).

NO SUBSTANTIAL FEDERAL QUESTIONS ARE PRESENTED

Appellants have alleged several claims under the equal protection clause of the fourteenth amendment. A review of those claims reveals that Appellants' claims do not present a substantial federal question. The issues raised have been decided previously by decisions of this Court. Accordingly this appeal should be dismissed pursuant to Sup. Ct. R. 16.1(b).

A. The City of Humble has No Equal Protection Claim

Article 1118x requires that Houston and all its enclave cities (those cities surrounded by the outer boundaries of Houston) vote as a single voting unit. Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982). It is undisputed that Humble is an enclave city. It is also undisputed that no Humble voter was denied the right to vote, nor was there any weighting of the votes cast. Appellants' claim is simply that there are fewer voters in Humble than in Houston, and that as a result, the votes of the residents of Humble were diluted.

The rights asserted by Appellants are not individual rights, but rights which they allegedly obtain as residents of a municipality. They assert that because they reside in a municipality other than Houston, the United States Constitution grants them an affirmative right to vote as a unit separate from residents of Houston. There is no assertion, nor could one reasonably be made, that the residents of Houston were denied their equal protection rights as a result of this voting structure. Yet the residents of Humble, living across the street from some of their Houston neighbors, claim that by reason of a municipal boundary they have some constitutional entitlement to vote as a separate entity. The Supreme Court has never recognized such a right.

The equal protection clause by its very terms protects the right of "persons", not political subdivisions. *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961). The Supreme Court in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 29 n.66 (1973) stated that "this Court has never questioned the State's power to draw reasonable distinctions between political subdivisions within its borders." *See also Salsburg* v. *Maryland*, 346 U.S. 545, 552 (1954).

The fact that the election structure in Article 1118x provides that certain municipalities vote as separate units while others vote in a multi-city unit does not invalidate the statute. In

McGowan v. *Maryland*, this Court stated that, "the Equal Protection clause relates to equality between persons as such, rather than between areas and . . . territorial uniformity is not a constitutional prerequisite." 346 U.S. at 427. As noted above, individual voters in Humble were treated the same as individual voters in Houston in the 1979 election which created METRO.

Appellants claim that the Constitution requires that Humble be treated like a non-enclave city. The Supreme Court has repeatedly stated, however, that legislation which treats various political subdivisions of a state differently is not to be held unconstitutional if "any state of facts reasonably may be conceived to justify" the system. *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60, 74 (1978). The inclusion of enclave cities such as Humble within the primary voting unit easily passes constitutional muster under this test.

B. The "Rational Basis" Test, and Not the "Strict Scrutiny" Test, Is the Proper Standard for Judicial Review of the Voting Unit Classifications Established by Article 1118x.

An analysis of any claim of violation of equal protection necessarily begins with an examination of the classifications created by legislative action and a realization that the exercise of the legislative function invariably and inevitably affects some people differently than others. Legislative classifications generally will not be struck down merely because they are imperfect or imprecise. *New York City Transit Authority* v. *Beazer*, 440 U.S. 568, 592 (1979); *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 314 (1976); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). Further, state laws are entitled to a presumption of validity when attacked on the basis of the equal protection clause. *Parham* v. *Hughes*, 441 U.S. 347, 351 (1979). Thus, in the absence of a suspect classification or abridgement of a fundamental right, legislative line-drawing is held unconstitutional only when "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of

legitimate purposes" that a court can only conclude that the legislature's actions were irrational. *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979); *Parham* v. *Hughes*, 441 U.S. at 352.

Appellants assert, however, that the voting unit classifications embodied in Article 1118x are to be judged according to the "strict scrutiny" tests of *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969) and *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969). The cited cases, as well as the relevant Fifth Circuit and Supreme Court precedent, do not support this assertion.

This Court has stated repeatedly that the "strict scrutiny" test only applies to legislation which makes classifications based on suspect criteria such as race, or abridges a fundamental right. *See, eg., San Antonio Independent School District* v. *Rodriguez*, 411 U.S. at 17. Appellants do not assert, nor could they justifiably contend, that they are members of a discrete and insular minority, historically shut off from access to the political processes which yield legislation. Nor do Appellants contend that the designation of "incorporated cities or towns which are wholly located within the perimeter of the outer boundary of the principal city" as a "unit of election", Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982), is a suspect classification. There is, therefore, no allegation of a suspect classification which might trigger the application of the "strict scrutiny" test.

There also has been no abridgement of a fundamental right which would require the application of "strict scrutiny" in this case. *Kramer*, 395 U.S. 621, and *Cipriano*, 395 U.S. 701, both involved a *denial* of the right to vote. The application of the "strict scrutiny" test in these cases hinged on this denial, not on the mere fact that the litigation concerned voting. In *Kramer*, the Court expressly stated, "Our exacting examination is not necessitated by the subject of election; rather it is required because some resident citizens are permitted to participate and some are not." 395 U.S. at 629. Where, as here, no plaintiffs

were deprived of the right to vote, the "strict scrutiny" test does not apply.

Several circuit courts have applied the "rational basis" test in similar situations, where plaintiffs alleged vote dilution and sought to be classified as a separate voting unit. *See, eg., Creel* v. *Freeman*, 531 F.2d 286 (5th Cir. 1976), *cert. denied*, 429 U.S. 1066 (1977). The court in that case upheld a state statute which required residents of the cities of Jasper and Carbon Hill in Walker County, Alabama, to vote with other residents of the county in a single voting unit. The court held that the statute was neither irrational nor wholly unrelated to a legitimate objective. 531 F. 2d at 288. *See also Cantwell* v. *Hudnut*, 566 F.2d 30 (7th Cir. 1977), *cert. denied*, 439 U.S. 1114 (1979); *Clark* v. *Town of Greenburgh*, 436 F.2d 770 (2d Cir. 1971); *Phillips* v. *Beasley*, 78 F.R.D. 207 (N.D. Ala. 1978).

Finally, in *Lockport*, 430 U.S. at 266, the Supreme Court indicated that, for purposes of equal protection analysis, referendum elections, such as the METRO confirmation and tax authorization election challenged here, are to be distinguished from elections of legislative representatives. The Court wrote:

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance . . . in analyzing the propriety of recognizing distinctive voter interests in a "single shot" referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voter's views will be adequately represented through their representatives in the legislature. . . .

Id. This Court has never recognized a fundamental right to vote as a separate voting unit in a referendum election sufficient to trigger application of the "strict scrutiny" test. Appellants' reliance on representative election cases, such as *Dunn* v. *Blumstein*, 405 U.S. 330 (1972), *Evans* v. *Cornman*, 398 U.S. 419 (1970), *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), *Williams* v. *Rhodes*, 393 U.S. 23 (1968), *Reynolds* v. *Sims*, 377

U.S. 533 (1964), and *Locklear* v. *North Carolina State Board of Elections*, 514 F.2d 1152 (4th Cir. 1975), is as misplaced as their reliance on cases such as *Hill* v. *Stone*, 421 U.S. 289 (1975), *City of Phoenix* v. *Kolodziejski*, 399 U.S. 204 (1970), *Kramer*, 395 U.S. 621, and *Cipriano*, 395 U.S. 701, in which plaintiffs were deprived of their right to vote. Where, as in this appeal, there is no suspect classification, there has been no denial of the right to vote, and the election is a "single-shot" referendum, the "strict scrutiny" test simply does not apply; rather, the "rational basis" test traditionally applied to legislative classifications governs.

C. The Classification of Election Units Established by Article 1118x is Reasonable and, Therefore, Does Not Violate the Equal Protection Clause

The Texas Legislature designated three classes of voters which would be allowed to confirm or reject the creation of METRO. The first election unit included the principal city, Houston, and all incorporated areas wholly within the boundaries of the principal city. Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982). Qualified voters in this principal voting unit were given the power to veto the creation of METRO. *Id.* § 5(g). Humble was part of this principal voting unit. The second class was designated as a maximum of five voting units created in unincorporated areas by the Commissioners' Court of each county included in the METRO District. *Id.* § 5(c),(f)(2). The third class consisted of all other incorporated areas located wholly within the initial limits of the METRO District, but not wholly within the principal city. *Id.* § 5(f)(3). Qualified voters in election units other than the principal voting unit could not block creation of METRO; they could only exclude their respective territories from the METRO District. *Id.* § 5(g). Each voter within each election unit had one vote.

The rational basis for this legislative line-drawing is readily apparent. The Legislature could have reasonably concluded that

the problems it hoped to alleviate — concentration of people and motor vehicles in expanding metropolitan areas, air pollution, increased dangers to the health and welfare of affected persons, serious congestion on traffic arteries with a resulting retardation of mobility, and damage to and deterioration of property, the economic life of the area, and the quality of life of the area's citizens, *Id.* § 1 — occur primarily in the incorporated areas within the perimeter of the outer boundaries of the principal city, rather than in either the less populated unincorporated areas or the incorporated areas outside that perimeter. It could also have reasonably determined that METRO would be impotent and of minimal effect without the participation of the area in which the concentration of people and vehicular traffic is the greatest. Further, the Legislature could have reasonably decided that a negative vote from the principal election unit would effectively nullify its efforts to attack the problems inherent in persons and vehicles converging on the principal city each day. Finally, it could have reasonably determined that the participation of outlying or sparsely populated areas in the METRO District was less crucial to the success of METRO because they contributed to the problems articulated above to a lesser extent than did the principal voting unit.

A rational basis exists for different treatment of the individual voting units within METRO and, therefore, the statute must be upheld.

D. Appellants Have Not Demonstrated Any Discrimination Vis-A-Vis Other Areas

Appellants claim that residents of Humble, simply because they reside in Humble, must be treated differently than residents of Houston and other voters within the principal voting unit. Appellants seek to compare the statute's treatment of residents of Humble with its treatment of residents of three other types of voting units.

First, Appellants assert that they were discriminated against because enclave areas which are not incorporated did not vote in the principal voting unit. Article 1118x provides that unincorporated areas both within and without the perimeter of the outer boundaries of Houston are included in election units designated by the Commissioners Court of Harris County. Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(c),(f)(2) (Vernon Supp. 1982). This provision reflects the Legislature's determination that residents of less populous unincorporated areas may have different interests in mass transit than the residents of incorporated municipalities. There is certainly nothing irrational about creating voting units comprised of those unincorporated areas.

Appellants also assert that Humble was discriminated against vis-a-vis the Cities of Galena Park and Jacinto City. Here, Appellants attempt to assert that Galena Park and Jacinto City are located within the boundaries of Houston. This challenge concerns the construction of state law, which authorizes cities to create navigation and wharfage districts. Tex. Rev. Civ. Stat. Ann. arts. 1183-87 (Vernon 1963). Further, as noted above, the trial court held unequivocally that Jacinto City and Galena Park are not located within the outer boundaries of Houston. Consequently, those cities voted as separate voting units, as required by Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(3).

Third, Appellants assert that the fact that cities outside the perimeter of the outer boundary of Houston voted as separate units evidences invidious discrimination against Humble. Appellants' argument is incongruous. They first assert that "the weight of every voter in each unit was equal." Two sentences later they assert that "there is no equality or uniformity in the twenty-three city election units and the five unincorporated area units." Jurisdictional Statement, pp. 18-19. Appellants' confusion springs from a misguided attempt to apply the constitutional requirement of equal voting units in representational elections in the context of a voter referendum. There is no

constitutional requirement that election units be equal in elections where the voters' will is expressed directly, rather than through elected representatives. *Lockport*, 430 U.S. at 266. Further, there is nothing irrational about a voting system whereby cities located in the vicinity of a metropolitan area but outside the boundaries of the principal city are permitted to vote as separate election units. As the opinion of the Court of Appeals below stated:

> Although Appellants may have preferred that the legislature draw the line more strictly to exclude Humble or more leniently to include cities outside Houston's city limits, Appellants' dissatisfaction is not grounds for invalidating the statute if the class which included Humble is constitutionally justifiable.

City of Humble v. *Metropolitan Transit Authority*, 636 S.W.2d 483, 491 (Tex. App. — Austin 1982, writ ref'd n.r.e.), Jurisdictional Statement at 13a.

Finally, Appellants attempt to assert that differences between Article 1118x, authorizing creation of a metropolitan transit authority, and Article 1118y, authorizing creation of a regional transportation authority, indicate invidious discrimination.

First, Article 1118y was not passed until after this suit was filed by Appellants. The Legislature passed Article 1118y effective August 27, 1979. *See* Tex. Rev. Civ. Stat. Ann. art. 1118y (Vernon Supp. 1982). This suit was filed on December 7, 1978. Appellants' pleadings in the trial court did not raise any claim of discrimination between metropolitan areas operating under Article 1118x and metropolitan areas operating under Article 1118y. The opinion of the Court of Appeals does not address this claim of discrimination. Therefore, it is not properly before this Court.

Further, Article 1118y allows the creation of a regional transit authority in a metropolitan area with two principal cities. Tex. Rev. Civ. Stat. Ann. art. 1118y (Vernon Supp. 1982). Different

considerations apply to the creation of a transit authority for a metropolitan area with two primary hubs, two county governments and two major city governments in the area. Article 1118x was designed to apply to areas with one principal city, such as Houston, and specifically exempted bicounty metropolitan areas. Tex. Rev. Civ. Stat. Ann. art. 1118x § 15 (Vernon Supp. 1982). Therefore, the Legislature had a rational basis for making distinctions between the two statutes.

It should again be noted that Appellants are not asserting any denial of their individual voting rights, which were equal to all other voters in that district, but are asserting additional voting rights that allegedly spring from the existence of the municipality of Humble within the primary voting unit provided for in Article 1118x. Appellants have not shown that these asserted rights present a substantial question.

E. Appellants' Asserted Right to an Elected Board of Directors is Without Merit

Appellants urge this Court to decide whether the equal protection clause of the fourteenth amendment to the United States Constitution requires the election of the METRO Board, asserting in their Jurisdictional Statement that "[a]t issue is the question reserved in *Sailors* v. *Board of Education of Kent*, 387 U.S. 105 (1967)." (p.23). Rather than presenting the question reserved in *Sailors*, the issue on appeal to this Court is controlled by that decision.

In *Sailors*, the appointment to a county school board of members chosen by the boards of directors of the school districts within the county was challenged by the plaintiff as being a violation of the equal protection clause and the "one man, one vote" principle of *Reynolds* v. *Sims*, 377 U.S. 533 (1964). This Court held that "since the choice of members of the county school board did not involve an election and since none was required for these non-legislative offices, the principle of 'one man, one vote' has no relevancy." 387 U.S. at 111. Justice

Douglas' opinion stated that, "[w]e need not decide at the present time whether a state may constitute a local legislative body through the appointive rather than the elective process." 387 U.S. at 110–11. The Court has continued to leave the question open. *See, e.g., Rodriguez* v. *Popular Democratic Party*, 102 S.Ct. 2194, 2200 n.9 (1982). However, that question is not presented in this appeal.

i) The METRO Board is not a legislative body

Appellants' assertion that this appeal presents the question reserved in *Sailors* is based upon the premise that the METRO Board is a legislative body. However, Appellants cite no evidence or authority for this assertion. In fact, the case law demonstrates that the METRO Board is not a legislative body.

Appellants' rely heavily on METRO's alleged taxing authority as grounds for requiring direct election of the METRO Board. It should first be noted, however, that the METRO Board is not empowered to levy a tax of any kind by its own authority. Section 11A(b) of Article 1118x provides as follows:

> No tax of any kind may be levied and collected by the Board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of the authority voting at an election held by the Board for that purpose.

Tex Rev. Civ. Stat. Ann. art. 1118x § 11A(b) (Vernon Supp. 1982). This section further forbids any subsequent increase in a tax unless it is approved at an election. Consequently, the METRO Board itself has no powers of taxation. Taxes may only be levied by the voters themselves.

Furthermore, in *Sailors*, this Court upheld the constitutionality of an appointed board which had the power to levy taxes. The Court specifically noted that the board had the authority to levy taxes, 387 U.S. at 110 n.7, but held that there was no constitutional prohibition against such a non-legislative board being appointed rather than elected.

Appellants also assert that the authority granted to METRO to adopt rules and enforce them through penalties requires that the METRO Board be elected. However, this authority is limited in scope to reasonable rules and regulations concerning areas within the discrete subject matter of the transit authority. Tex. Rev. Civ. Stat. Ann. art. 1118x § 13 (Vernon Supp. 1982). Such limited authority does not transform the METRO Board into a legislative body. *See Byrd* v. *City of San Antonio*, 587 F.2d 184 (5th Cir. 1979). Moreover, there is no evidence in the record that the METRO Board has ever attempted to establish penalties under section 13, and, even if section 13 were an unconstitutional grant of power to METRO, the remedy would be severance of that section, not dissolution of METRO. Tex. Rev. Civ. Stat. Ann. art. 1118x § 18 (Vernon Supp. 1982).

Finally, the Fifth Circuit has held that an almost identical governmental entity, the Metropolitan Atlanta Rapid Transit Authority ("MARTA"), is not a legislative body. *City of Atlanta* v. *Metropolitan Atlanta Rapid Transit Authority*, 636 F.2d 1084, 1089 (5th Cir. 1981). Like METRO, MARTA was constituted as a distinct corporate entity by the Georgia Legislature, and authorized to operate and administer a transit system for the Atlanta metropolitan area. The plaintiffs there challenged the appointment of state officials to the MARTA Board of Directors, claiming that the state had denied them equal protection under the laws. The Fifth Circuit, however, held:

> We find no federal or state constitutional provision that guarantees the citizens of Atlanta a certain proportional representation on the MARTA Board. MARTA is a creature of Georgia law established by state statute. As the creator of MARTA, the Georgia General Assembly was free to decide the number of representatives from each government unit participating in the system and whether the Board members would be appointed or elected.
>
> * * * *

> Under Georgia law members of the MARTA Board are either appointed or serve ex-officio. None are elected by popular vote. Additionally, the MARTA Board can properly be characterized as an administrative body which does not exercise traditionally legislative powers. Under *Sailors* it was within the legislature's discretion to choose to appoint the MARTA Board rather than having its members popularly elected. This method of selecting members renders the one man-one vote system inapplicable.

636 F.2d at 1089.

This precedent demonstrates that the METRO Board should not be considered a legislative body. Therefore, since the METRO Board is an appointed, non-legislative local body, this appeal is controlled by *Sailors*. That decision refutes Appellants' assertion that the METRO Board should be elected.

ii) Regardless of the legislative/administrative characterization of the METRO Board, the "one man, one Vote" principle does not apply to such a body

Appellants' Jurisdictional Statement contains no authority which supports their contention that the election of the METRO Board is required by the equal protection clause. Appellants improperly cite the line of voting rights cases extending back to *Reynolds* v. *Sims*, 377 U.S. 533 (1964) in support of their position. In *Reynolds* the plaintiffs alleged that the Alabama legislature's failure to reapportion itself in accordance with population changes over the 60 year period from 1900 to 1960 denied them equal protection of the law in violation of the Alabama Constitution and the fourteenth amendment to the United States Constitution. This Court held that the equal protection clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. 377 U.S. at 576. However, the "one man, one vote" principle of *Reynolds* v. *Sims* simply does not apply to appointed office-holders.

Appellants assert, however, that the "one man, one vote" principle should apply because the METRO Board is allegedly a

legislative body. Virtually every court that has addressed the issue has abandoned the legislative/administrative distinction in deciding whether the proportional representation principle of the equal protection clause applies to appointed local governmental bodies. In *Hadley* v. *Junior College District*, Justice Black wrote:

> It has also been urged that we distinguish for apportionment purposes between elections for 'legislative' officials and those for 'administrative' officers. Such a suggestion would leave courts with an equally unmanageable principle since governmental activities 'cannot easily be classified in the neat categories favored by civics texts.' [*Avery* v. *Midland County*, 390 U.S. 474, 482, 88 S.Ct. 1114, 1119 (1968)] and it must also be rejected.

397 U.S. 50, 55-56 (1970) (Citation omitted.) *See also Hoots* v. *Pennsylvania*, 672 F.2d 1124, 1130 (3d Cir. 1982) ("*Sailors* v. *Board of Education* . . . did address the question whether the principle of proportional representation has any bearing on non-elective offices, and held that it does not"); *Oakes* v. *Board of Trustees*, 385 F. Supp. 392, 394 (N.D. Miss. 1974) ("in all its decisions on the one person, one vote issue, the Supreme Court has never suggested that the principle of equal representation should be extended to appointed governmental officials or agencies."); *Rosenthal* v. *Board of Education*, 385 F. Supp. 223, 226 (E.D. N.Y. 1974) ("once it is determined that the members of the Central Board are not selected by popular election, there is no need to determine whether they perform functions that may be better defined as 'legislative' or 'administrative' "), *aff'd* 420 U.S. 985 (1975); *People ex rel. Younger* v. *County of El Dorado*, 487 P.2d 1193, 1209 (Cal. 1971) ("We think that the true meaning of *Sailors* and *Hadley* is that the legislative or administrative nature of the activities performed by an officer is irrelevant; if the officer is elected, 'one person, one vote' applies. If he is appointed, that principle does not apply."). Thus, it is clear that regardless of the characterization of the

METRO Board, it is an appointed body to which the proportional representation principle does not apply.

A cursory examination will reveal that all of the cases cited in Appellants' Jurisdictional Statement involved elections. *See Ball* v. *James*, 451 U.S. 355 (1981) (election of directors of electric utility and water delivery system); *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60 (1978) (municipal election); *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973) (referendum authorizing creation of watershed improvement district); *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) (election of water storage district board of directors); *Hadley* v. *Junior College District*, 397 U.S. 50 (1970) (election of junior college district trustees); *Avery* v. *Midland County*, 390 U.S. 474 (1968) (election of commissioners to County Commissioners Court); *Benner* v. *Oswald*, 592 F.2d 174 (3d Cir. 1979) (election of Penn State University Board of Trustees), *cert. denied*, 444 U.S. 832 (1979); *Little Thunder* v. *South Dakota*, 518 F.2d 1253 (8th Cir. 1975) (election of county officials); *Bianchi* v. *Griffing*, 393 F.2d 457 (2d Cir. 1968) (election of Suffolk County Board of Supervisors). Appellants' cited authority has no bearing on whether an election is required.

Appellants fail to cite any authority (other than *Sailors*) which involves the legislatively-authorized appointment of state or local officials. No court has recognized a constitutional requirement that such officers be elected rather than appointed. Thus, for example, in *Wallis* v. *Blue*, 263 F. Supp. 965 (N.D. Ga. 1967), the system established by a constitutional referendum authorizing the county Grand Jury to choose members of the county board of education was challenged. The court held:

> There is no federal requirement intended to compel a state to elect any of its officers or agents through popular vote of the people. *Fortson* vs. *Morris*, 385 U.S. 231 (1966). . . . so long as the method is chosen by the people, and the method does not constitute an unreasonable delegation of power, it

> is sufficient .... To require otherwise would subject the people to endless objections at every level. In general, the choice of means of such a selection is left to the people either directly or through its legislature .... No federal right exists to invoke the 'voting case' requirements so as to nullify the selection of the present in Carroll County.

263 F. Supp. at 969. *See also Grivetti* v. *Illinois State Electoral Board*, 335 F. Supp. 779 (N.D. Ill. 1971), *aff'd* 406 U.S. 913 (1972) (appointment of Illinois Redistricting Commission members does not violate equal protection clause); *Hinton* v. *Threet*, 280 F.Supp. 831, 840 (M.D. Tenn. 1968) ("As far as the Federal Constitution is concerned, a state may refuse to set up an elective process for the selection of city or county officials.").

Appellants attempt to meet this argument by stating in their Jurisdictional Statement that:

> Inherent in the one person, one vote principle is the premise that a legislative official must be elected. If this principle applies only to governing bodies required by a state to be elected, the principle can be effectively emasculated by a state providing for the Legislature and all legislative bodies of political subdivisions to be appointed.

(p.23). This argument is not persuasive. First, *Hadley* and subsequent cases have eliminated the legislative/administrative distinction only so far as the proportional representation principle of the equal protection clause applies to local governmental bodies, not as it applies to state legislatures with policy-making authority over an entire state. Therefore, it does not necessarily follow that a state may constitutionally provide that its legislature shall be appointed rather than elected.

Furthermore, that question is not presented here. The State of Texas has vested its legislative power in a Senate and a House of Representatives, both of which are popularly elected. Tex. Const. art. III, §§ 1-3. This Court need not consider whether Texas could provide for the appointment of its legislature and all legislative bodies and political subdivisions. *See Rodriguez* v.

Popular Democratic Party, 102 S.Ct. 2194, 2199 n.8, 2200 n.9 (1982) (constitutionality of abolishing legislative branch of government in Puerto Rico not presented where Puerto Rico has in fact established a popularly elected legislature).

iii) Assuming the "one man, one vote" principle is inapplicable, there is no constitutional requirement that the METRO Board be elected

Appellants have only challenged the appointment of the METRO Board on the basis of the fourteenth amendment. The fourteenth amendment prohibits a state from denying to any person the equal protection of the laws. U.S. Const. amend. 14 § 1 As a matter of logic, a person can be deprived of the equal protection of the laws only if the state treats that individual differently from some other individual. Inherent in the concept of inequality is the concept of differentiation. Thus, where there is no classification, discrimination, or differentiation, there can be no unequal treatment. This principle is particularly applicable here. As noted by the Texas Court of Appeals below:

> Initially, appellants are advancing an improper constitutional argument. The basis for an equal protection violation is that similarly situated individuals are treated differently by the government. See *American Constitutional Law* § 16-1, at 993 (1978). While appellants may believe the appointment scheme violates some constitutional command, no cognizable equal protection violation exists under this aspect of art. 1118x because all citizens within the transit authority are treated equally, *i.e.*, no one has the right to elect a director. No impermissible statutory discrimination exists because *all* persons affected by the statute are deprived of the right appellants assert.

636 S.W.2d at 491, Jurisdictional Statement at 14a. *See also Concerned Citizens* v. *Pine Creek Conservancy District*, 473 F. Supp. 334, 339 (S.D. Ohio 1977) (where all voters treated alike, no equal protection violation); *Stokes* v. *Fortson*, 234 F. Supp. 575, 577 (N.D. Ga. 1964) (if every person's vote counts the

same, no denial of equal protection of the law). Thus, it is clear that the equal protection clause is not violated by the appointment of a body such as the METRO Board.

Furthermore, the right to have the METRO Board elected is not required by the constitutional guarantee of a republican form of government, U.S. Const. art. IV § 6. Questions concerning the proper construction of a "republican form of government" have traditionally been regarded as political questions that are not the proper subject of judicial decisions. *See Luther* v. *Borden*, 48 U.S. (7 How.) 1 (1849). That guarantee should not be regarded as the source of a right to vote for local bodies such as the METRO Board. *See Holshouser* v. *Scott*, 335 F. Supp. 928, 934 (M.D. N.C. 1971). *See generally* Note, *Reapportionment*, 79 Harv. L.Rev. 1228, 1241-43 (1966).

Even at the state-wide, rather than the local level, this Court has consistently refused to find any Constitutional requirement that a particular governmental position be elected. The Court has noted, "the right to vote, *per se* is not a constitutionally protected right," *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 35 n.78 (1973). In *Fortson* v. *Morris*, 385 U.S. 231 (1966), the Court upheld the validity of a Georgia constitutional provision that provided for the election of that state's governor by the state legislature when no gubernatorial candidate received a majority of the votes cast in a general election.

The Court has also upheld the constitutional validity of a New York law which allowed the governor of New York to appoint a new United States Senator when a vacancy arose less than sixty days prior to the regularly scheduled spring primary. *Valenti* v. *Rockefeller*, 393 U.S. 405 (1969).

More recently, this Court in *Rodriguez* v. *Popular Democratic Party*, 102 S.Ct. 2194 (1982) held that a Puerto Rico statute which allowed the vacancy caused by the death of a representative in the Puerto Rico House of Representatives to be

filled by a person appointed by the political party of the deceased representative did not violate the U.S. Constitution. The appellants in that case asserted that all the qualified electors had a right protected under the Constitution to vote for the members of the legislature. The Court noted, "[t]he source of this purported right is somewhat unclear," 102 S.Ct. at 2199 n.8, and held there was simply no constitutional provision that required that a legislative vacancy be filled by election. 102 S.Ct. at 2201. *See also Lynch* v. *Illinois State Board of Elections*, 682 F.2d 93 (7th Cir. 1982) (no violation by appointment of replacement to fill vacancy in elective municipal office).

In sum, Appellants have not demonstrated that there is a constitutional requirement in the fourteenth amendment or elsewhere in the Constitution that the METRO Board be elected. This issue does not present a substantial federal question requiring consideration by this Court.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Appellee moves to dismiss this appeal.

Respectively submitted,

JONATHAN DAY

North Tower, Pennzoil Place
700 Milam, Suite 900
Houston, Texas 77002
(713) 225-7000

Counsel for Appellee
Metropolitan Transit
Authority

Of Counsel:

MAYOR, DAY & CALDWELL
North Tower, Pennzoil Place
700 Milam, Suite 900
Houston, Texas 77002

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 1983, three copies of this Motion to Dismiss were deposited in a United States Post Office or mailbox, with first class postage prepaid, addressed to Robert L. Burns, counsel of record for Appellants, Wilson Archer, et al., at his post office address, Ten Ten Lamar Building, Suite 1111, Houston, Texas 77002, in accordance with Sup. Ct. R. 28.3.

APPENDIX A

No. 283,604

CITY OF HUMBLE, ET AL. vs. METROPOLITAN TRANSIT AUTHORITY, ET AL.	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 53RD JUDICIAL DISTRICT

(November 10, 1980)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned cause came on for trial before the Court on June 18, 1980. All parties and their attorneys were present. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, in response to a request from Plaintiffs, makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. In September 1977, the governing body of the City of Houston instituted proceedings to create a rapid transit authority under Tex. Rev. Civ. Stat. Ann. art. 1118x.

2. In October 1977, the governing body of the City of Houston created a rapid transit authority pursuant to Art. 1118x.

3. The City of Houston, Texas, had a population of not less than 1,200,000 inhabitants, according to the 1970 Federal Census at the time of the creation.

4. The area within the boundaries of the rapid transit authority as created by the governing body of the City of Houston had a population density of greater than 250 persons per square mile at the time of the creation.

5. The City of Humble, Texas, was located wholly within the perimeter of the outer boundary of the City of Houston at the time of the creation.

6. In July 1978, the board of directors of the rapid transit authority ("Metropolitan Transit Authority" or "MTA") adopted an order calling for an election confirming its creation and authorizing a sales and use tax for its benefit not to exceed one percent (1%).

7. Five (5) election units were created in the unincorporated areas of Harris County by the Commissioners Court of Harris County.

8. All incorporated areas within the perimeter of the outer boundary of the City of Houston voted as one election unit ("enclave cities").

9. Each incorporated town or city within the authority which was not located within the perimeter of the outer boundary of the City of Houston voted as a separate election unit.

10. The confirmation and tax authorization election was held in August 1978.

11. The election unit comprised of the City of Houston and its enclave cities voted to confirm the creation of MTA and authorize the proposed tax.

12. Two of the five unincorporated election units voted to confirm the creation of MTA and authorize the proposed tax.

13. The cities of El Lago, Friendswood, Katy, Missouri City, Taylor Lake Village and Waller voted to confirm the creation of MTA and authorize the proposed tax.

14. The Comptroller of the State of Texas has been collecting the Sales and Use Tax pursuant to Article 1118x and the 1978 confirmation and tax authorization election on receipts from taxable transactions after October 1, 1978.

15. Plaintiff Wilson's Superette, Inc. has been paying the Sales and Use Tax to the Comptroller on receipts from the sale of goods sold after October 1, 1978.

16. The City of Humble was included in the election unit comprised of the incorporated areas within the perimeter of the outer boundary of the City of Houston.

17. The individual plaintiffs in this lawsuit voted in the 1978 confirmation and tax election.

18. The vote of each qualified voter in the City of Humble was given the same weight as the vote of every other voter in the election unit comprised of the City of Houston and its enclave cities.

19. The cities of Jacinto City and Galena Park, Texas, voted as separate election units.

20. The cities of Jacinto City and Galena Park are not wholly located within the perimeter of the outer boundary of the City of Houston.

21. The boundaries of the five election units for the unincorporated areas of Harris County, were drawn so as to define into separate units areas that had common travel patterns, common commercial and trade patterns, shared transportation and mass transit needs and generally shared interests of all kinds.

22. The concentration of vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas and particularly in the Houston metropolitan area adversely affect the economy of the State of Texas.

23. The concentration of motor vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas adversely affect the health and welfare of the citizens of those areas and the economic life of those areas.

24. There exists a compelling need to remedy the vehicular congestion and concentration in major metropolitan areas in Texas.

25. As population in a metropolitan area increases, vehicular concentration and congestion tend to increase.

26. As population density in an area increases, vehicular concentration and congestion tend to increase.

27. Cities with a population of not less than 600,000 population generally have a greater need for a mass transit system than cities with a population of less than 600,000.

28. Metropolitan areas with a population density of not less than 250 persons per square mile generally have a greater need for a mass transit system than areas with a lower population density.

29. Unique mass transportation problems arise in a metropolitan area with two large primary population centers, and these unique problems require substantially different remedies than those which are suited to a metropolitan area with only one primary population center.

30. In order for a mass transit system to operate effectively in the Houston metropolitan area, it is necessary that the City of Humble and other incorporated areas within the perimeter of the outer boundary of the City of Houston be included in the area served by and supporting the mass transit system.

31. The failure to include the enclave cities within the principal election unit could have resulted in a "checkerboard" service area for the authority. Such checkerboarding in the area of greatest need, i.e., the City of Houston and its enclave cities, would occasion operating inefficiencies and inequities in matching the authority's services with the authority's taxpayers.

32. The boundaries of MTA as described in Houston Ordinance Nos. 77-1780 and 77-1946 and the order of the MTA Board canvassing and declaring the election, are sufficiently described so that they can be located on the ground.

33. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron are residents of the City of Humble. Plaintiff Wilson's Superette, Inc. is a Texas corporation operating in the City of Humble.

34. Plaintiffs have not incurred any special burden as a result of the allegedly improper creation of voting units in unincorporated areas of Harris County.

35. Plaintiffs have not incurred any special burden as a result of the cities of Jacinto City and Galena Park not being included in the voting unit comprised of Houston and its enclave cities.

36. Plaintiffs have not incurred any special burden as a result of Houston City Ordinance No. 78-1413.

37. Plaintiffs have not incurred any special burden as a result of the alleged lack of ascertainability of the MTA boundaries.

CONCLUSIONS OF LAW

1. The Texas Legislature has the power under the Texas Constitution to authorize the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

2. The Texas Constitution neither expressly nor impliedly prohibits the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

3. Article 1118x applies both to metropolitan areas which currently meet the population and density requirements and to metropolitan areas which meet those requirements in the future.

4. Article 1118x is a general law and therefore does not violate Article 3, § 56 of the Texas Constitution.

5. The tax authorized by Article 1118x is levied by general law and for public purposes and therefore does not violate Article 8, § 3 of the Texas Constitution.

6. The Comptroller of the State of Texas is legally authorized to collect and administer the sales and use tax authorized by Article 1118x.

7. The captions of the 1973, 1975 and 1977 Acts give fair and reasonable notice of the provision of those Acts.

8. The captions of the 1973, 1975 and 1977 Acts do not violate Article 11, § 35 of the Texas Constitution.

9. Article 1118x provides reasonable standards, procedures and guidelines to be followed in determining whether a rapid transit authority shall be created and what the initial boundaries of that authority shall be.

10. Article 1118x provides the Commissioners Court with reasonable guidelines for creating separate voting units in unincorporated areas of counties included within the initial boundaries of the rapid transit authority.

11. The findings in Section 1 of Article 1118x, which state the problems sought to be remedied by the statute, provide reasonable guidelines for creating and administering a rapid transit authority.

12. Article 1118x does not unlawfully delegate legislative power to the governing body of the principal city in a metropolitan area.

13. Article 1118x does not unlawfully delegate legislative power to the Commissioners Court in counties included within the initial territory of a rapid transit authority.

14. Article 118x does not unlawfully delegate legislative power to the transit authority board.

15. Permitting voting units to determine whether a rapid transit authority will be created within such units is not an unlawful delegation of legislative power to the qualified voters within those units.

16. The population density requirement of § 2 of Article 1118x requires an average population density of 250 persons per square mile throughout the metropolitan area, not a density of 250 persons in each included square mile.

17. Article 1118x is not void for vagueness.

18. Article 1118x does not infringe upon the governmental powers of home-rule cities in violation of Article 11, § 5 of the Texas Constitution.

19. The inclusion of the City of Humble within the MTA does not impair exercise of that city's powers of annexation.

20. MTA was validly created pursuant to Article 1118x.

21. The Sales and Use Tax was validly authorized pursuant to Article 1118x.

22. The Houston metropolitan area is not a bi-county metropolitan area as defined by § 15 of Article 1118x, notwithstanding

the fact that the City of Houston extends into more than one county.

23. Permitting the cities of Galena Park and Jacinto City to vote as separate election units was in accordance with Article 1118x.

24. The Harris County Commissioners Court validly created five units of election in the unincorporated areas of Harris County in accordance with Article 1118x.

25. Houston Ordinance No. 78-1413 was a valid exercise of authority pursuant to Article 1118x.

26. The boundaries of the MTA are defined with sufficient clarity so as to be legally valid.

27. The definition of a metropolitan area in Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

28. The creation of the three types of voting units in Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

29. The delegation of authority to the Commissioners Court to create election units in Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

30. The governing body of the MTA is an administrative body, not a legislative body. The MTA is a governmental unit that has a narrow, single purpose — the providing of mass transit services in a limited area of the State of Texas.

31. The appointment of MTA board members under Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

32. The appointment of MTA board members under Article 1118x does not violate the 14th Amendment of the United States Constitution.

33. The State of Texas has a legitimate interest in the alleviation of vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

34. Article 1118x provides a reasonable mechanism for remedying vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

35. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not violate Article 1, § 3 of the Texas Constitution.

36. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not deprive the voters and residents of the City of Humble of equal protection of the law under the 14th Amendment of the United States Constitution.

37. Plaintiffs do not have standing to attack the creation of voting units in unincorporated areas of Harris County.

38. Plaintiffs do not have standing to challenge the exclusion of Galena Park and Jacinto City from the voting unit comprised of the City of Houston and its enclave cities.

39. Plaintiffs do not have standing to challenge the exclusion of Plum Grove from the MTA.

40. Plaintiffs do not have standing to challenge the alleged lack of ascertainability of the MTA boundaries.

41. This Court has no jurisdiction to consider Plaintiff's allegations attacking the specific procedures followed in creating MTA the legality of acts taken by the MTA following its creation and other defects in the establishment of the MTA except in a *quo warranto* proceeding.

42. The suit brought by Plaintiffs is not a *quo warranto* proceeding, notwithstanding the fact that the Comptroller of the State of Texas was named as a party defendant.

43. All findings of fact more properly denominated conclusions of law are hereby adopted as conclusions of law and all conclusions of law more properly denominated findings of fact are hereby adopted as findings of fact.

DONE this 10th day of November, 1980, at Austin, Texas.

.....

Judge Presiding

APPENDIX B
No. 283,604

CITY OF HUMBLE, ET AL., *Plaintiffs,* v. METROPOLITAN TRANSIT AUTHORITY, ET AL., *Defendants.*	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 53RD JUDICIAL DISTRICT

(November 25, 1980)

ADDITIONAL AND SUPPLEMENTAL FINDINGS OF FACT

Pursuant to the request of the Plaintiffs for additional and supplemental findings of fact and conclusions of law, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. The area within Harris County Election Unit No. 2, located wholly within the perimeter of the outer boundary of the City of Houston in August 1978, includes portions of census tracts 246, 248 and 249 as shown on Plaintiffs' Exhibit No. 28.

2. The population of such portion of Harris County Election Unit No. 2 in 1970 was 3,921 inhabitants, according to the 1970 Federal Census.

3. The population of such portion of Harris County Election Unit No. 2 in 1978 was estimated to be 20,407 inhabitants.

4. The area of Harris County Election Unit No. 3 located wholly within the perimeter of the outer boundary of the City of Houston in August, 1978, includes census tracts 224, 228, 239, 236, 238, and portions of tracts 247 and 237, as shown on Plaintiffs' Exhibit No. 28.

5. The population of such portion of Harris County Election Unit No. 3 in 1970 was 28,218 inhabitants, according to the 1970 Federal Census.

6. The population of such portion of Harris County Election Unit No. 3 in 1978 was estimated to be 55,921 inhabitants.

7. The population in 1970, according to the Federal Census and estimate for 1978 of the incorporated areas located wholly within the perimeter of the outer boundary of the City of Houston were:

Cities	1970	Estimated 1978 (Year-End)
Houston	1,232,802	1,693,206
Bellaire	19,009	16,935
West University Place	13,317	12,608
Southside Place	1,466	1,382
Humble	3,278	6,568
Villages		
Bunker Hill	3,977	4,296
Hedwig	3,255	3,915
Hilshire	627	750
Hunters Creek	3,959	5,561
Piney Point	2,548	2,841
Spring Valley	3,170	3,109

8. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of the incorporated areas located outside the perimeter of the outer boundary of the City of Houston were:

Cities	1970	Estimated 1978 (Year-End)
Baytown	43,980	48,114
Deer Park	12,773	21,214
El Lago	949	3,500
Friendswood	7,433	8,850
Galena Park	10,479	9,329
Jacinto City	9,563	10,397
Jersey Village	765	3,297

Cities	1970	Estimated 1978 (Year-End)
Katy	2,596	4,309
La Porte	7,149	8,899
Lomax	893	2,964
Missouri City	4,136	13,520
Morgans Point	593	752
Nassau Bay	2,240	4,510
Pasadena	89,277	105,209
Pearland	6,444	12,234
Seabrook	3,811	5,760
Shoreacres	1,872	1,662
South Houston	11,527	12,996
Stafford	2,905	13,147
Taylor Lake Village	1,798	1,819
Tomball	2,734	3,817
Waller	1,123	1,365
Webster	2,231	3,108

9. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of Harris County Election Units Nos. 1, 2, 3, 4, and 5 were:

	1970	Estimated 1978
#1	32,399	141,703
#2	105,529	317,323
#3	58,406	113,292
#4	22,963	38,391
#5	18,953	67,946

10. A majority of those persons voting in the election precincts which included the City of Humble voted against confirming creation of MTA and authorizing a sales and use tax.

11. The Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron voted against confirming creation of MTA and authorizing a sales and use tax.

12. The populations of the various election units at the time of the election were not equal.

13. The unique mass transportation problems that may arise in a metropolitan area with two large population centers include the fact that patterns of commuting are different from areas where there is a single large primary population center and also the problems of overlapping governmental units are increased.

14. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron became subject to the MTA sales and use tax that a majority of those persons voting in the election precincts which included the City of Humble voted against.

15. The total annual income of MTA from sales and use tax would have been increased if the cities of Jacinto City and Galena Park had been included in the voting unit of the City of Houston.

Dated this 25th day of November, 1980, at Austin, Texas.

.....

Judge Presiding

Office-Supreme Court, U.S.
FILED
JUL 28 1983
ALEXANDER L. STEVAS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. 82-2124

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

On Appeal from the Court of Appeals for
the Third Supreme Judicial District of Texas

Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and The State of Texas' Motion to Dismiss

JIM MATTOX
Attorney General of Texas

DAVID R. RICHARDS
Executive Assistant
Attorney General

GILBERT J. BERNAL, JR.
Assistant Attorney General
Chief, Taxation Division

BRADLEY SEALS
Assistant Attorney General

P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-4751

Attorneys for Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and the State of Texas

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW 1

LIST OF PARTIES 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 3

ARGUMENT: THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL 7

The rational basis test should be applied to test the constitutionality of article 1118x, V.T.C.S. 7

The "one man, one vote" rule is not applicable 12

The classifications created by the statute are rational 15

The members of the MTA Board of Directors do not have to be elected 17

CONCLUSION 20

PROOF OF SERVICE 21

TABLE OF AUTHORITIES

PAGE

American Party of Texas v. White, 415 U.S. 767, 94 S.Ct. 1296 (1974) 11

Associated Enterprises, Inc. v. Toltec Watershed Improvement District, 410 U.S. 743, 93 S.Ct. 1237 (1973) 11

Avery v. Midland County, 390 U.S. 474, 88 S.Ct. 1114 (1968) 12

Ball v. James, 451 U.S. 355, 101 S.Ct. 1811 (1981) 11

Cipriano v. City of Houma, 395 U.S. 701, 89 S.Ct. 1897 (1969) 11

City of Phoenix v. Kolodziejski, 399 U.S. 204, 90 S.Ct. 1990 (1970) 11

Hadley v. Junior College District of Metropolitan Kansas City, 397 U.S. 50, 90 S.Ct. 97 (1970) 19

Harper v. Virginia Board of Elections, 383 U.S. 663, 86 S.Ct. 1079 (1966) *10*

Kahn v. Shevin, 416 U.S. 361, 94 S.Ct. 1734 (1974) 10

Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193 (1944) 9,10

Kramer v. Union Free School District, 395 U.S. 621, 89 S.Ct. 1886 (1969) 11

Lockport v. Citizens for Community Action, 430 U.S. 259, 97 S.Ct. 1047 (1977) 13,19

Marshall v. United States, 414 U.S. 417, 94 S.Ct. 700 (1974) 9

Mason v. Missouri, 179 U.S. 328, 21 S.Ct. 125 (1900) 11

McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802, 89 S.Ct. 1410 (1969) 10

McLaughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283 (1964) 10

O'Brien v. Skinner, 414 U.S. 524, 94 S.Ct. 740 (1974) 10

Police Department of Chicago v. Mosely, 408 U.S. 92, 92 S.Ct. 2286 (1972) *10*

Reynolds v. Sims, 377 U.S 533, 84 S.Ct. 1362 (1964) 12,13,18

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705 (1973) 10

Sailors v. Board of Education of the County of Kent, 387 U.S. 105, 87 S.Ct. 1549 (1967) 18

Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719, 93 S.Ct. 1224 (1973) 11,12,19

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973) 10

Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322 (1969) 10

Sugarman v. Dougall, 413 U.S. 634, 93 S.Ct. 2842 (1973) 10

Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536 (1974) 17

Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526 (1964) 12

Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858 (1971) 15

CONSTITUTIONS AND STATUTES

United States Constitution
Fourteenth Amendment 1,2,7,9

Texas Statutes
Article 1118x, V.T.C.S. ..... *passim*

Sec. 1. 4

Sec. 1(a) 4

Sec. 1(b) 4

Sec. 1(c) 4

Sec. 1(d) 4

Sec. 2 8

Sec. 2(a) 5

Sec. 3(a) 5

Sec. 3(b) 5

Sec. 4 17

Sec. 5 6

Sec. 5(c) 5

Sec. 5(f) 5

Sec. 5(f)(1) 5

Sec. 5(f)(3) 5

Sec. 5(g) 6

Sec. 6 20

Sec. 6(a) 9

Sec. 6(b) 9

Sec. 6(c) 9

Sec. 6(d) 9

Sec. 6(e) 9

Sec. 6(g) 9

Sec. 6(j) 9

Sec. 6(l) 9

Sec. 6(q) 9

Sec. 6B 17

Sec. 11A(b) 13

Sec. 11B 5

Article 1118y, V.T.C.S. 17

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. 82-2124

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

On Appeal from the Court of Appeals for the Third Supreme Judicial District of Texas

* * * *

Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and The State of Texas' Motion to Dismiss

* * * *

QUESTIONS PRESENTED FOR REVIEW

Do the election units established by Article 1118x, V.T.C.S., violate the "one man, one vote" rule applicable to legislative apportionment thereby rendering the statute unconstitutional pursuant to the Equal Protection Clause of the Fourteenth Amendment?

Are the classifications established by Article 1118x, V.T.C.S., pertaining to the units of election rationally related to the purpose of the statute and therefore not violative of the Equal Protection Clause of the Fourteenth Amendment?

Does Article 1118x, V.T.C.S., violate the Equal Protection Clause of the Fourteenth Amendment and its "one man, one vote" principle by providing for appointment rather than election of the board of directors of the Metropolitan Transit Authority?

LIST OF PARTIES

Wilson Archer, Appellant

Jerry Hamilton, Appellant

Ellis L. Herron, Appellant

Wilson's Superette, Inc., Appellant

City of Humble, Appellant

Metropolitan Transit Authority, Appellee

Bob Bullock, Comptroller of Public Accounts of the State of Texas, Appellee

The State of Texas, Appellee

CONTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellants adequately set forth the constitutional and statutory provisions involved herein in their Jurisdictional Statement and the Appendix thereto.

STATEMENT OF THE CASE

Plaintiffs, Appellants here, filed suit in the District Court of Travis County, Texas, 53rd Judicial District seeking a declaratory judgment that Article 1118x, V.T.C.S., is void and unconstitutional, that the Metropolitan Transit Authority (MTA) is without legal existence, that the Comptroller of Public Accounts is not legally authorized to administer and collect the sales and use tax imposed in Article 1118x, V.T.C.S., and that the MTA should be permanently enjoined from expending funds derived from the sales and use tax.

Defendants, Appellees here, MTA, Bob Bullock, Comptroller of Public Accounts of the State of Texas, and the State of Texas, filed answers.

The case was tried before the court without a jury on June 18, 1980. The court rendered judgment that Plaintiffs take nothing against Defendants on August 8, 1980 and Plaintiffs appealed. The Court of Appeals for the Third Supreme Judicial District issued a decision on June 2, 1982, accompanied by a written opinion holding Article 1118x, V.T.C.S., constitutional and affirming the trial court. Plaintiffs' application for writ of error to the Texas Supreme Court was denied February 10, 1983. Subsequently, the Supreme Court of Texas denied Plaintiffs' Motion for Rehearing on March 30, 1983.

Appellants are challenging the creation of a metropolitan transit authority in the Houston metropolitan area on the grounds that the enabling

legislation, Article 1118x, V.T.C.S., is unconstitutional. Consisting of three acts passed in 1973, 1975, and 1977 by the Texas Legislature, the statute was enacted to deal with the problems in metropolitan areas caused by an increasing number of vehicles. The Act itself sets out the major reason for its passage. In Section 1 of the Act, the legislature found that a dominant part of the state's population is located in metropolitan areas that cross the boundary lines of local jurisdictions and counties, Sec. 1(a), and that the increasing concentration of population in these areas accompanied by an increasing number of automobiles was leading to greater pollution, causing injury to both persons and property. Sec. 1(b). The increasing traffic congestion caused by the large number of automobiles adversely affected the health and welfare of the citizens of the metropolitan area and its economy. Sec. 1(c). In part, the increasing proliferation of motor vehicles was caused by the lack of mass transit services and mass transit systems should be encouraged in order to improve the quality of air and reduce traffic congestion. Sec. 1(d).

The City of Houston and its metropolitan area illustrates these problems. Between 1970 and 1980 there was a 68% increase in miles of traffic per day in the Houston area and in the same period traffic congestion substantially worsened. Emissions from motor vehicles in the Houston area was approximately 368 tons per day of vehicle pollution. Peak hour travel speeds on Houston freeways dramatically decreased.

In the early 1970's, Houston had a horse and buggy transportation system with a terrible pollution problem and was ineligible for Federal mass transit funds due to the lack of any area-wide transportation system. In November of 1973, a proposed county-wide transportation system, Houston Area Rapid Transit Authority, (HARTA), funded by an emission tax was voted down.

Based upon that experience, public officials in Harris County made suggestions to the legislature for enabling legislation to allow the creation of a mass transit authority acceptable to the people of Harris County. The units of election were changed from one county-wide up or down vote. Under Article 1118x, V.T.C.S., a principal city and its enclave cities, defined as those cities located within the perimeter of the outer boundary of the city, would vote as one unit, Sec. 5(f)(1), thereby enabling the area with the greatest need for such a transportation system to vote as a single unit. The Commissioner's Court of the county would create no more than five election units in the unincorporated area of the county, Sec. 5(c) and (f), and incorporated cities not within the perimeter of the outer boundary of the principal city would each be a separate unit of election. Sec. 5(f)(3). The transit authority was to be funded with a sales tax, and changes were made in the selection of the board to make it more representative. The size of the principal city was reduced from 1,200,000 to 600,000 so that other cities, particularly San Antonio, would have the option of creating such an authority.

As finally enacted in 1977, the statute provides that the governing body of a city, with not less than 600,000 people located in a metropolitan area, after being presented with a petition signed by 5,000 people, giving notice, and holding public meetings, could create a metropolitan rapid transit authority. Sec. 3(a) and (b). "Metropolitan area" is defined in the statute as an area having a population density of not less than 250 persons per square mile and containing not less than 51% of the incorporated territory comprising a city having a population of not less than 600,000 inhabitants. Sec. 2(a). The statute authorized funding through a sales tax not to exceed 1% collected by the State Comptroller and then remitted to the MTA. Sec. 11B. Such a tax is imposed only after approval of the

voters in the various election units. Sec. 5. However the authority would not come into existence unless the election unit comprised of the principal city and the enclave cities voted in its favor. Sec. 5(g).

The City of Houston, being the principal city of Harris County and containing over 600,000 people, initiated proceedings to create a rapid transit authority within Harris County and portions of adjacent counties. After a hearing on October 4, 1977, the governing body of Houston created the Houston Metropolitan Rapid Transit Authority with its initial territory. Later, the Mayor of Houston was authorized to appoint the initial Board of Directors.

Harris County Commissioner's Court created five units of election in the unincorporated areas of the county taking into account the transportation interests of the various areas of the county. The Board of Directors of the MTA called an election for August 12, 1978 to determine whether the authority should be confirmed and a 1% sales tax imposed. The election was held in the following units of election: (1) five unincorporated areas were designated by the Commissioner's Court of Harris County and each voted as one unit of election; (2) all incorporated areas, including Humble, within the perimeter of the outer boundary of the City of Houston constituted one unit of election; (3) each incorporated city and town located outside of the perimeter of the outer boundary of the City of Houston voted as a unit of election.

Two unincorporated areas comprised of a great many suburban commuters voted for the authority. The remaining three units, comprised of people with different transportation interests, voted not to join the authority. The majority of the voters in the election unit comprising Houston and the incorporated cities and towns within the perimeter of Houston's outer boundary voted

to levy the tax and join the authority by a margin of 63,510 to 47,596. However, within the election precincts of Humble the majority of people voted against joining the MTA. With respect to the incorporated areas outside the perimeter of Houston's outer boundary seven cities voted to join the MTA and the remainder opted out. Thus, the principal city,its enclave cities, and the unincorporated areas of the county with large numbers of suburban commuters voted to join the MTA.

ARGUMENT: THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

Bob Bullock, Comptroller of Public Accounts of the State of Texas and the State of Texas, Appellees, in the above entitled case, move to dismiss Appellants' Appeal on the grounds that the questions presented are so unsubstantial as not to need further argument. The Court of Appeals for the Third Supreme Judicial District of Texas correctly decided the case.

THE RATIONAL BASIS TEST SHOULD BE APPLIED TO TEST THE CONSTITUTIONALITY OF ARTICLE 1118x, V.T.C.S.

Appellants complain the establishment of the Metropolitan Transit Authority and the imposition of a 1% sales tax by a single-shot election violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because the election units violate the "one man, one vote" rule and that the "strict scrutiny" test should be applied to hold the election units invalid. The State of Texas believes that the classifications created by the statute should be measured by the rational basis test, that the "one man, one vote" rule does not apply to the particular election by which the MTA was created, and that the election units are rationally related to the purpose of Article 1118x, V.T.C.S., which

is the creation of a mass transit authority, and therefore the statute is constitutional. The decision of the Court of Appeals of the Third Supreme Judicial District of Texas should be affirmed.

It must be emphasized that the MTA is a special or limited purpose district. Specifically, it was created pursuant to one statute to establish and operate a mass transit system. A "mass transit system" is defined in Article 1118x, Sec. 2, V.T.C.S., as follows:

> (e) "Mass transit" means transportation of passengers and hand carried packages and/or baggage of said passengers by means of motorbus, trolley coach, street railway, rail, suspended overhead rail, elevated railways, subways, or any other surface, overhead or underground transportation (except taxicabs), or by any combination of the foregoing.
>
> (f) "System" means all real and personal property of every kind and nature whatsoever, owned or held at any time by an authority for mass transit purposes, including (without limiting the generality of the foregoing), land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars, and buses), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all such facilities.

These two definitions show the wide variety of problems a mass transit system must cope with and the many decisions that must be made. Section 6(a) of the Act gives the MTA the powers necessary to carry out and effectuate the purpose of the Act. Sections 6(b) through 6(q) then list a number of its powers. While the MTA has a variety of powers including the right to sue, Sec. 6(c), to acquire properties, Sec. 6(d), to operate and maintain systems within other legal entities, Sec. 6(e), to condemn property, Sec. 6(g), to establish fares, Sec. 6(j), and enter into contracts, Sec. 6(l), these powers are all related to the creation and operation of a mass transit system. The MTA does not provide general governmental service as does the state or even a county. However, the complexity of its task means it needs a variety of powers to carry out the necessary operations of a mass transit system.

In order to determine whether or not the citizens of Humble were denied equal protection under the Fourteenth Amendment by the terms of the MTA enabling legislation, the proper test must be applied. The United States Supreme Court has developed two tests for determining the constitutionality of government-made classifications. The legislative action must be evaluated in terms of either a strict scrutiny test or a rational basis test.

The strict scrutiny test emerged in *Korematsu v. United States*, 323 U.S. 214 (1944), where the Court held that legal restrictions on the civil rights of a single racial group were "immediately suspect" and would be subject "to the most rigid scrutiny" and upheld only if found to be necessary restrictions. The types of governmental classifications which give rise to the test must involve either a "fundamental right" or a "suspect" classification. *Marshall v. United States*, 414 U.S. 417, 421 (1974).

The Court has specifically declared as "suspect" classifications those based on alienage, *Sugarman v. Dougall*, 413 U.S. 634, 641-43 (1973); nationality, *Korematsu, supra*, at 216; and race, *McLaughlin v. Florida*, 379 U.S. 184 (1964). The characteristics of a suspect class have been defined as follows: (1) the class has immutable characteristics over which individuals have little or no control", *Kahn v. Shevin*, 416 U.S. 351 (1974); (2) the class has "a history of purposeful unequal treatment," *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 28 (1973); (3) the class has been "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process," *Rodriquez, supra*, at 28. The citizens of Humble, as a class, do not fall within any of these categories.

Fundamental rights which are subject to the strict scrutiny test are those which are explicity or implicity guaranteed by the Constitution. *Rodriquez, supra*, at 33. The Supreme Court has specifically designated certain rights as constitutionally guaranteed. These rights include that of association, *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 101 (1972); interstate travel, *Shapiro v. Thompson* 394 U.S. 618 (1969); privacy, *Roe v. Wade*, 410 U.S. 113 (1973); and voting, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

Although it may appear that the fundamental right to vote is involved in this case, there must be more than just the appearance of involvement of a fundamental right. Incidental burdens or "trival inconvenience" do not warrant the imposition of strict scrutiny. *O'Brien v. Skinner*, 414 U.S. 524, 532 (1974); *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969). Legislative enactments may affect a voter, but this does not inevitably mean that his fundamental right to vote has been infringed. Many statutory restrictions on voting rights have been upheld as

necessary to insure an orderly electoral process. For example, not every voter can place his name on the ballot; he can legitimately be required to demonstrate public support for his candidacy. *American Party of Texas v. White*, 415 U.S. 767 (1974). Similarly, a state law requiring citizens to register to be eligible to vote is recognized as a justifiable restriction on the franchise. *Mason v. Missouri*, 179 U.S. 328 (1900).

In some instances, a complete denial of voting rights was found not to infringe a fundamental right. Non-land owners were denied the right to vote in the elections of governmental units that have a special limited purpose, yet the legislative enactment was not subjected to strict scrutiny. *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973); *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973); *Ball v. James*, 451 U.S. 355 (1981). Some Supreme Court cases which have examined voting rights as related to special district elections or special issue referenda in cities have declared invalid statutes which deny to certain groups the right to vote. *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). In its argument that the "strict scrutiny" test should be applied, Petitioners cite *Cipriano v. City of Houma*, *supra*, and *City of Phoenix v. Kolodziejski*, *supra*. It is important to realize those cases involve certain classes of voters being completely deprived of the right to vote. No such circumstance is presented in this case. In this case there has been no denial of a fundamental right and none of the Appellants represent a suspect class. Consequently "the rational basis" test should be applied to test the statute and not the "strict scrutiny" test.

THE "ONE MAN, ONE VOTE" RULE IS NOT APPLICABLE

Appellants allege that the MTA enabling legislation violates the principle of "one man, one vote." This principle has been used to strike down legislative apportionment schemes which deny voting rights by diluting a citizen's vote and resulting in under-representation. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964). *Avery v. Midland County*, 390 U.S. 474 (1968). The Court's holdings in these cases specify that the Equal Protection Clause safeguards a citizen's right to equal legislative representation. A person's vote is "diluted" if a heavily populated area has the same amount of representation as a sparsely populated area. In *Avery v. Midland County, supra*, the Court held the "one man, one vote" rule applied to units of local governments having general governmental powers over an entire geographical area. In concluding Texas counties possessed such general governmental power, the Court emphasized that the commissioners maintain buildings, administer welfare services and determine school districts both inside and outside the city. *Id.* at 483. The Court also pointed out that refusing to exercise such powers as building a library or participate in a federal food stamp program is as significant a decision as exercising such powers. *Id.* at 483.

In cases involving special districts the Court has held the "one man, one vote" rule is inapplicable. In *Salyer Land Co. v. Tulare Lake Water Storage District, supra*, the Court held that a California statute limiting the electorate for the Board of Directors of the Tulare Lake Basin Water Storage District to landowners and apportioning the vote according to the assessed value of the land was constitutional. The Court emphasized that at issue was a special purpose district and the activities of the district disproportionately affected landowners. Consequently, it held that the popular election requirements enunciated in *Reynolds v. Sims, supra*, were

inapplicable to elections of this nature. *Id.* at 730. The court applied the rational basis test when it stated that in a special district the question is whether ". . . any state of facts reasonably may be conceived to justify California's decision to deny the franchise to lessees while granting it to landowners." *Id.* at 332. See also the companion case of *Associated Enterprises, Inc. v. Toltec Watershed Improvement District, supra.*

In a similar, more recent case, *Ball v. James, supra,* the court ruled a voting scheme for the elections of directors to an agriculture improvement and power district which limited the franchise to landowners did not violate the "one man, one vote" rule because it was a limited purpose district and its activities disproportionately affected landowners. In reaching its conclusion that the district does not exercise the sort of governmental powers requiring "one man, one vote," the Court pointed out it did not administer governmental functions such as street maintenance, operation of schools, sanitation, health or welfare services. Except for the first item the MTA does not provide such services. The MTA does have taxing authority to increase taxes, but that may be done only by the voters within the authority in a duly called election. Sec.11A(b). It is not a general governmental unit.

What is at issue here is the drawing of boundary lines for the election units in a single-shot election. The voters in certain election units approved the creation of the MTA and the imposition of a sales tax in a single referendum. Legislative representation is not at issue in the instant case. Supreme Court cases have recognized the wide discretion the states have in forming and allocating governmental tasks to local subdivisions and the discrete interests that such local governmental units may have. *Reynolds v. Sims, supra; Lockport v. Citizens for Community Action,* 430 U.S. 259, 266 (1977). In *Lockport,* the Supreme Court upheld a New

York law providing that a county charter will go into effect if approved in a referendum by separate majorites of voters who live within the cities and those who live outside the cities within the county.

The Court stated that:

> [E]qual protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interest in a "single-shot" referendum.

The Court analyzed the interests of the affected number of voters and concluded that the differences were sufficient under the Equal Protection Clause to justify the classification made by New York law. Appellants' primary complaint is that they were included within the same election unit as the City of Houston rather than voting as a separate election unit. Generally the citizens of the unit of election comprising the principal city, Houston, would have similar transportation interests in terms of automobile congestion, pollution problems and commuter patterns. Citizens living outside this core area either in an incorporated area or unincorporated area would be further away from the major population center of the metropolitan area and may have different transportation interests. They may not be part of the major commuter approaches to the principal city and may have different transportation interests. Thus, whether or not the MTA was approved would have a disproportionate impact on the citizens within the unit of election comprising the principal city because it is there the need for mass transit is the greatest.

In this case no citizen of Humble was denied the right to vote. The voters of Humble represented themselves

in expressing their preference on the MTA issue. All other voters within the perimeter of the outer boundary of the City of Houston represented themselves in the election. The mere fact that one interest group or another concerned with the outcome of an election has found itself outvoted provides no basis for invoking constitutional protections where there is no indication that this segment of the population was denied access to the political system. *Whitcomb v. Chavis*, 403 U.S. 124, 154 (1971).

THE CLASSIFICATIONS CREATED BY THE STATUTE ARE RATIONAL

The voting scheme for the creation of election units is rationally related to the purpose of the statue which is to create mass transit authorities. Essentially, what the election unit classifications accomplish is to create one large voting unit consisting of the principal city plus the enclave cities within the perimeter of the outer boundary of the principal city. The unincorporated areas are divided into voting units by Commissioner's Court, and the remaining incorporated cities, not wholly within the outer boundary of the principal city, vote as separate election units.

Treating the principal city and its enclave cities as one voting unit is a rational step toward the creation of a mass transit system. At the trial there was testimony that to be successful, a mass transit system needs to have the entire urban area under one authority or city and that unsuccessful systems have only small areas or fractions of the areas in which they have some control. A successful system needs a territory that is uniform. With the principal city and its enclave cities as one unit, any mass transit system adopted would be guaranteed a substantial core area as a base of operation. Allowing each incorporated city within the perimeter of the outer boundary of the city to vote

separately could result in a highly ineffective checkerboard pattern. As established, the Houston MTA is contiguous with some minor exceptions, map app. p. 13. Having determined to treat the principal city and its enclave cities as one unit, the legislature had to decide how to establish voting units outside the perimeter of the outer boundary of the principal city.

The legislature chose to have Commissioner's Courts draw the boundaries for voting units in unincorporated areas. This is a convenient method since Commissioner's Court is responsible for providing service to unincorporated areas, and is in an excellent position to establish voting units by transportation interests. In fact, the lines were drawn so that the people in the same voting unit had the same grouping of transportation interests. Commuter suburban type areas were included in the same voting units. Nothing could be more rationally related to the purpose of the Act. The incorporated cities not within the outer perimeter of the principal city are already well established, discrete political entities. There is nothing unreasonable in having them vote as separate election units.

Appellants seem to believe that the only election units constitutionally acceptable would be either one unit of election such as the HARTA proposal or units of approximately equal population. This completely ignores designing election units based upon the transportation interest of the voters. Essentially the transportation interests of the electorate provide the basis of the election units of Article 1118x, V.T.C.S. The classifications created by the statute are rationally related to the purpose of the statute. That purpose, it should be emphasized, is the creation of a special purpose entity to provide mass transit.

Appellants assert that since Humble's relationship to the city of Houston is in many ways similar to that of Jacinto City and Galena Park, which voted as separate election units, then the statute is unconstitutional. Merely because the residents of the city of Humble, an enclave city, are treated differently from residents of Jacinto City and Galena Park, cities which are almost enclave cities, is no reason to invalidate the entire statute. The statute creates election units which may be used in other cities and in fact have been used in San Antonio. The legislature has wide latitude in drawing lines and the decision of the legislature must be accepted unless it is wide of the mark. *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974). As has been demonstrated, the election unit classifications are rationally related to the purpose of the statute. Jacinto City and Galena Park, though close to being enclave cities, are not. Merely because two cities that are not quite enclave cities were properly excluded from the voting unit containing the principle city does not mean the statute is unconstitutional.

Appellants comparison of the enabling legislation pursuant to which the Houston MTA was created, Article 1118x, V.T.C.S., and legislation applicable to other sorts of metropolitan areas, Article 1118y, V.T.C.S., is beside the point. If the classifications created by the statute are rationally related to the purpose of the statue and the statute is constitutional, it is immaterial that the Texas Legislature may have designed another scheme for other types of metropolitan areas with different transportation needs.

THE MEMBERS OF THE MTA BOARD OF DIRECTORS DO NOT HAVE TO BE ELECTED

Appellants argue that Article 1118x, V.T.C.S. is unconstitutional because it provides in Sections 4 and 6B

that the Board of Directors shall be appointed rather than elected.

In the leading case on the issue *Sailors v. Board of Education of the County of Kent*, 387 U.S. 105 (1967), the United States Supreme Court upheld the constitutionality of a Michigan statute which provided for the members of a county school board to be appointed rather than elected. It could find no constitutional reason why state or local officers of non-legislative character could not be appointed rather than elected. *Id.*, at 108. The *Sailors* court quoted *Reynolds v. Sims*, thus:

> Political subdivisions of States -- counties, cities or whatever -- never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the number, nature and duration of the power conferred upon [them] . . .and the territory over which they shall be exercised rests in the absolute discretion of the State.

Id. at 107-08. A state, county or municipal government has vast leeway in the management of its internal affairs. *Id.* at 109. The court concluded its analysis by stating:

> Since the choice of members of the county school board did not involve an election and

> since none was required for these nonlegislative offices, the principle of "one man, one vote" has no relevancy."

Id. at 111.

In *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 51 (1970) the Supreme Court struck down as violating the Equal Protection Clause a scheme of apportionment for election of junior college trustees. The Court specifically limited its decision to the situation where the state had decided to choose the officers by election. The court in *Hadley*, on page 58, cited *Sailors* for the proposition that,

> [w]here a State chooses to select members of an official body by appointment rather than election, and that choice does not itself offend the Constitution, the fact that each official does not "represent" the same number of people does not deny those people equal protection of the laws.

Later cases by the United States Supreme Court, specifically, *Salyer Land Co. v. Tulare Water District*, *supra*, and *Lockport v. Citizens for Community Action*, *supra*, make clear that equal protection principles are of limited relevance in analyzing "single-shot" referenda or special-purpose governmental entities.

There can be no doubt the MTA is a special purpose district and not a governmental unit with general governmental powers over an entire geographical area. The MTA provides one major governmental service--that of mass transit. It is not empowered to have welfare services nor to operate federally funded programs such as food stamps or aid to families with dependent children. It does not run schools or have sanitation or sewage responsibilities. It has no court

system of its own. It does not have its own fire department. While it does have substantial powers such as eminent domain, Sec. 6, it simply is not a general governmental entity comparable to a city or county. There is no constitutional requirement that the MTA's board of directors be elected.

CONCLUSION

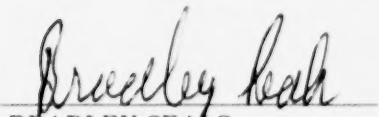
Appellants' Appeal should be dismissed.

Respectfully submitted,

JIM MATTOX
Attorney General of Texas

DAVID R. RICHARDS
Executive Assistant
Attorney General

GILBERT J. BERNAL, JR.
Assistant Attorney General
Chief, Taxation Division



BRADLEY SEALS
Assistant Attorney General

P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-4721

Attorneys for Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and the State of Texas.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. 82-2124

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

PROOF OF SERVICE

I hereby certify that on the 27th day of July, 1983, three copies of the above and foregoing Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and the State of Texas' Motion to Dismiss was sent certified U.S. mail to Mr. Jonathan Day, MAYOR, DAY AND CALDWELL, Pennzoil Place, North Tower, Houston, Texas 77002 and Mr. Robert Burns, Ten Ten Lamar Building, Suite 1111, Houston, Texas 77002.

Bradley Seals
BRADLEY SEALS

No. 283,604

City of Humble, et al.	§	In the District Court of
	§	
vs.	§	Travis County, Texas
	§	
Metropolitan Transit	§	
Authority, et al.	§	53rd Judicial District

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned cause came on for trial before the Court on June 18, 1980. All parties and their attorneys were present. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, in response to a request from Plaintiffs, makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. In September 1977, the governing body of the City of Houston instituted proceedings to create a rapid transit authority under Tex.Rev.Civ.Stat.Ann. art. 1118x.

2. In October 1977, the governing body of the City of Houston created a rapid transit authority pursuant to Art. 1118x.

3. The City of Houston, Texas, had a population of not less than 1,200,000 inhabitants, according to the 1970 Federal Census at the time of the creation.

4. The area within the boundaries of the rapid transit authority as created by the governing body of the City of Houston had a population density of greater than 250 persons per square mile at the time of the creation.

5. The City of Humble, Texas, was located wholly within the perimeter of the outer boundary of the City of Houston at the time of the creation.

6. In July 1978, the board of directors of the rapid transit authority ("Metropolitan Transit Authority" or

"MTA") adopted an order calling for an election confirming its creation and authorizing a sales and use tax for its benefit not to exceed one percent (1%).

7. Five (5) election units were created in the unincorporated areas of Harris County by the Commissioners Court of Harris County.

8. All incorporated areas within the perimeter of the outer boundary of the City of Houston voted as one election unit ("enclave cities").

9. Each incorporated town or city within the authority which was not located within the perimeter of the outer boundary of the City of Houston voted as a separate election unit.

10. The confirmation and tax authorization election was held in August 1978.

11. The election unit comprised of the City of Houston and its enclave cities voted to confirm the creation of MTA and authorize the proposed tax.

12. Two of the five unincorporated election units voted to confirm the creation of MTA and authorize the proposed tax.

13. The cities of El Lago, Friendswood, Katy, Missouri City, Taylor Lake Village and Waller voted to confirm the creation of MTA and authorize the proposed tax.

14. The Comptroller of the State of Texas has been collecting the Sales and Use Tax pursuant to Article 1118x and the 1978 confirmation and tax authorization election on receipts from taxable transactions after October 1, 1978.

15. Plaintiff Wilson's Superette, Inc. has been paying the Sales and Use Tax to the Comptroller on receipts from the sale of goods sold after October 1, 1978.

16. The City of Humble was included in the election unit comprised of the incorporated areas within the perimeter of the outer boundary of the City of Houston.

17. The individual plaintiffs in this lawsuit voted in the 1978 confirmation and tax election.

18. The vote of each qualified voter in the City of Humble was given the same weight as the vote of every other voter in the election unit compromised of the City of Houston and its enclave cities.

19. The cities of Jacinto City and Galena Park, Texas, voted as separate election units.

20. The cities of Jacinto City and Galena Park are not wholly located within the perimeter of the outer boundary of the City of Houston.

21. The boundaries of the five election units for the unincorporated areas of Harris County, were drawn so as to define into separate units areas that had common travel patterns, common commercial and trade patterns, shared transportation and mass transit needs and generally shared interests of all kinds.

22. The concentration of vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas and particularly in the Houston metropolitan area adversely affect the economy of the State of Texas.

23. The concentration of motor vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas adversely affect the health and welfare of the citizens of those areas and the economic life of those areas.

24. There exists a compelling need to remedy the vehicular congestion and the concentration in major metropolitan areas in Texas.

25. As population in a metropolitan area increases, vehicular concentration and congestion tend to increase.

26. As population density in an area increases, vehicular concentration and congestion tend to increase.

27. Cities with a population of not less than 600,000 population generally have a greater need for a mass transit system than cities with a population of less than 600,000.

28. Metropolitan areas with a population density of not less than 250 persons per square mile generally have

a greater need for a mass transit system than areas with a lower population density.

29. Unique mass transportation problems arise in a metropolitan area with two large primary population centers, and these unique problems require substantially different remedies than those which are suited to a metropolitan area with only one primary population center.

30. In order for a mass transit system to operate effectively in the Houston metropolitan area, it is necessary that the City of Humble and other incorporated areas within the perimeter of the outer boundary of the City of Houston be included in the area served by and supporting the mass transit system.

31. The failure to include the enclave cities within the principal election unit could have resulted in a "checkerboard" service area for the authority. Such checkerboarding in the area of greatest need, i.e., the City of Houston and its enclave cities, would occasion operating inefficiencies and inequities in matching the authority's services with the authority's taxpayers.

32. The boundaries of MTA as described in Houston Ordinance Nos. 77-1780 and 77-1946 and the order of the MTA Board canvassing and declaring the election, are sufficiently described so that they can be located on the ground.

33. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron are residents of the City of Humble. Plaintiff Wilson's Superette, Inc. is a Texas corporation operating in the City of Humble.

35. Plaintiffs have not incurred any special burden as a result of the cities of Jacinto City and Galena Park not being included in the voting unit comprised of Houston and its enclave cities.

36. Plaintiffs have not incurred any special burden as a result of Houston City Ordinance No. 78-1413.

37. Plaintiffs have not incurred any special burden as a result of the alleged lack of ascertainability of the MTA boundaries.

CONCLUSIONS OF LAW

1. The Texas Legislature has the power under the Texas Constitution to authorize the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

2. The Texas Constitution neither expressly nor impliedly prohibits the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

3. Article 1118x applies both to metropolitan areas which currently meet the population and density requirements and to metropolitan areas which meet those requirements in the future.

4. Article 1118x is a general law and therefore does not violate Article 3, §56 of the Texas Constitution.

5. The tax authorized by Article 1118x is levied by general law and for public purposes and therefore does not violate Article 8, §3 of the Texas Constitution.

6. The Comptroller of the State of Texas is legally authorized to collect and administer the sales and use tax authorized by Article 1118x.

7. The captions of the 1973, 1975 and 1977 Acts give fair and reasonable notice of the provision of those Acts.

8. The captions of the 1973, 1975 and 1977 Acts do not violate Article 11, §35 of the Texas Constitution.

9. Article 1118x provides reasonable standards, procedures and guidelines to be followed in determining whether a rapid transit authority shall be created and what the initial boundaries of that authority shall be.

10. Article 1118x provides the Commissioners Court with reasonable guidelines for creating separate voting units in unincorporated areas of counties included within the initial boundaries of the rapid transit authority.

11. The findings in Section 1 of Article 1118x, which state the problems sought to be remedied by the statute, provide reasonable guidelines for creating and administering a rapid transit authority.

12. Article 1118x does not unlawfully delegate legislative power to the governing body of the principal city in a metropolitan area.

13. Article 1118x does not unlawfully delegate legislative power to the Commissioners Court in counties included within the intitial territory of a rapid transit authority.

14. Article 1118x does not unlawfully delegate legislative power to the transit authority board.

15. Permitting voting units to determine whether a rapid transit authority will be created within such units is not an unlawful delegation of legislative power to the qualified voters within those units.

16. The population density requirement of §2 of Article 1118x requires an average population density of 250 persons per square mile throughout the metropolitan area, not a density of 250 persons in each included square mile.

17. Article 1118x is not void for vagueness.

18. Article 1118x does not infringe upon the governmental powers of home-rule cities in violation of Article 11, §5 of the Texas Constitution.

19. The inclusion of the City of Humble within the MTA does not impair exercise of that city's powers of annexation.

20. MTA was validly created pursuant to Article 1118x.

21. The Sales and Use Tax was validly authorized pursuant to Article 1118x.

22. The Houston metropolitan area is not a bi-county metropolitan area as defined by §15 of Article 1118x, notwithstanding the fact that the City of Houston extends into more than one county.

23. Permitting the cities of Galena Park and Jacinto City to vote as separate election units was in accordance with Article 1118x.

24. The Harris County Commissioners Court validly created five units of election in the unincorporated area of Harris County in accordance with Article 1118x.

25. Houston Ordinance No. 78-1413 was a valid exercise of authority pursuant to Article 1118x.

26. The boundaries of the MTA are defined with sufficient clarity so as to be legally valid.

27. The definition of a metropolitan area in Article 1118x does not violate Article 1, §3 of the Texas Constitution.

28. The creation of the three types of voting units in Article 1118x does not violate Article 1, §3 of the Texas Constitution.

29. The delegation of authority to the Commissioners Court to create election units in Article 1118x does not violate Article 1, §3 of the Texas Constitution.

30. The governing body of the MTA is an administrative body, not a legislative body. The MTA is a governmental unit that has a narrow, single purpose — the providing of mass transit services in a limited area of the State of Texas.

31. The appointment of MTA board members under Article 1118x does not violate Article 1, §3 of the Texas Constitution.

32. The appointment of MTA board members under Article 1118x does not violate the 14th Amendment of the United States Constitution.

33. The State of Texas has a legitimate interest in the alleviation of vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

34. Article 1118x provides a reasonable mechanism for remedying vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

35. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not violate Article 1, §3 of the Texas Constitution.

36. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not deprive the voters and residents of the City of Humble of equal protection of the law under the 14th Amendment of the United States Constitution.

37. Plaintiffs do not have standing to attack the creation of voting units in unincorporated areas of Harris County.

38. Plaintiffs do not have standing to challenge the exclusion of Galena Park and Jacinto City from the voting unit comprised of the City of Houston and its enclave cities.

39. Plaintiffs do not have standing to challenge the exclusion of Plum Grove from the MTA.

40. Plaintiffs do not have standing to challenge the alleged lack of ascertainability of the MTA boundaries.

41. This Court has no jurisdiction to consider Plaintiff's allegations attacking the specific procedures followed in creating MTA the legality of acts taken by the MTA following its creation and other defects in the establishment of the MTA except in a *quo warranto* proceeding.

42. The suit brought by Plaintiffs is not a *quo warranto* proceeding, notwithstanding the fact that the Comptroller of the State of Texas was named as a party defendant.

43. All findings of fact more properly denominated conclusions of law are hereby adopted as conclusions of law and all conclusions of law more properly denominated findings of fact are hereby adopted as findings of fact.

DONE this 10th Day of November, 1980, at Austin, Texas.

/S/

JUDGE PRESIDING

CT256/C

NO. 283,604

City of Humble, et al.,	§	
	§	
Plaintiffs,	§	In the District Court of
	§	
v.	§	Travis County, Texas
	§	
Metropolitan Transit Authority, et al.,	§	53rd Judicial District
	§	
	§	
Defendants.	§	

ADDITIONAL AND SUPPLEMENTAL FINDINGS OF FACT

Pursuant to the request of the Plaintiffs for additional and supplemental findings of fact and conclusions of law, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. The area within Harris County Election Unit No. 2, located wholly within the perimeter of the outer boundary of the City of Houston in August 1978, includes portions of census tracts 246, 248 and 249 as shown on Plaintiffs' Exhibit No. 28.

2. The population of such portion of Harris County Election Unit No. 2 in 1970 was 3,921 inhabitants, according to the 1970 Federal Census.

3. The population of such portion of Harris County Election Unit No. 2 in 1978 was estimated to be 20,407 inhabitants.

4. The area of Harris County Election Unit No. 3 located wholly within the perimeter of the outer boundary of the City of Houston in August, 1978, includes census tracts 224, 228, 239, 236, 238, and portions of tracts 247 and 237, as shown on Plaintiffs' Exhibit No. 28.

5. The population of such portion of Harris County Election Unit No. 3 in 1970 was estimated to be 28,218 inhabitants, according to the 1970 Federal Census.

6. The population of such portion of Harris County Election Unit No. 3 in 1978 was estimated to be 55,921 inhabitants.

7. The population in 1970, according to the Federal Census and estimate for 1978 of the incorporated areas located wholly within the perimeter of the outer boundary of the City of Houston were:

CITIES	1970	Estimated 1978 (Year-End)
HOUSTON	1,232,802	1,693,206
BELLAIRE	19,009	16,935
WEST UNIVERSITY PLACE	13,317	12,608
SOUTHSIDE PLACE	1,466	1,382
HUMBLE	3,278	6,568
VILLAGES		
BUNKER HILL	3,977	4,296
HEDWIG	3,255	3,915
HILSHIRE	627	750
HUNTERS CREEK	3,959	5,561
PINEY POINT	2,548	2,841
SPRING VALLEY	3,170	3,109

8. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of the incorporated areas located outside the perimeter of the outer boundary of City of Houston were:

CITIES	1970	Estimated 1978 (Year-End)
BAYTOWN	43,980	48,114
DEER PARK	12,773	21,214
EL LAGO	949	3,500
FRIENDSWOOD	7,433	8,850
GALENA PARK	10,479	9,329
JACINTO CITY	9,563	10,397
JERSEY VILLAGE	765	3,297
KATY	2,596	4,309
LA PORTE	7,149	8,899
LOMAX	893	2,964
MISSOURI CITY	4,136	13,520
MORGANS POINT	593	752
NASSAU BAY	2,240	4,510
PASADENA	89,277	205,209
PEARLAND	6,444	12,234
SEABROOK	3,811	5,760
SHOREACRES	1,872	1,662
SOUTH HOUSTON	11,527	12,996
STAFFORD	2,905	13,147
TAYLOR LAKE VILLAGE	1,798	1,819
TOMBALL	2,734	3,817
WALLER	1,123	1,365
WEBSTER	2,231	3,108

9. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of Harris County Election Units Nos. 1,2,3,4, and 5 were:

	1970	Estimated 1978
#1	32,399	141,703
#2	105,529	317,323

#3	58,406	113,292
#4	22,963	38,391
#5	18,953	67,946

10. A majority of those persons voting in the election precincts which included the City of Humble voted against confirming creation of MTA and authorizing a sales and use tax.

11. The Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron voted against confirming creation of MTA and authorizing a sales and use tax.

12. The populations of the various election units at the time of the election were not equal.

13. The unique mass transportation problems that may arise in a metropolitan area with two large population centers include the fact that patterns of commuting are different from areas where there is a single large primary population center and also the problems of overlapping governmental units are increased.

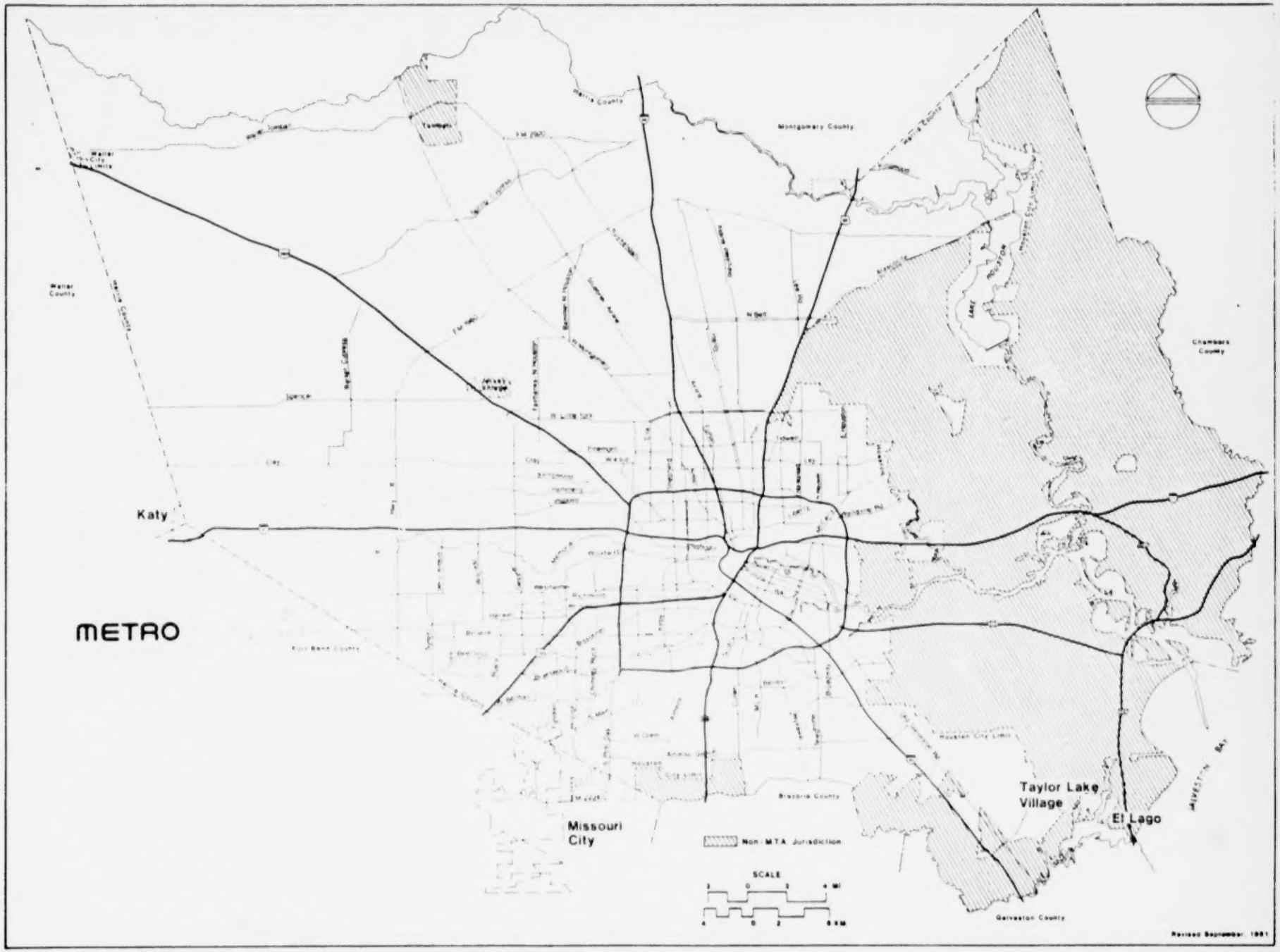
14. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron became subject to the MTA sales and use tax that a majority of those persons voting in the election precincts which included the City of Humble voted against.

15. The total annual income of MTA from sales and use tax would have been increased if the cities of Jacinto City and Galena Park had been included in the voting unit of the City of Houston.

Dated this 25th day of November, 1980, at Austin, Texas.

/S/

JUDGE PRESIDING


METRO
Katy
Missouri City
Taylor Lake Village
El Lago
Montgomery County
Chambers County
Galveston County
Brazoria County
Fort Bend County
Waller County
Non-MTA Jurisdiction
SCALE
Revised September 1981